TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. ~~570~~ 43

STEFENA BROWN, PETITIONER

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 12, 1956
CERTIORARI GRANTED NOVEMBER 13, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 570

STEFENA BROWN, PETITIONER

vs.

UNITED STATES OF AMERICA

PETITION FOR CERTIORARI FILED JULY 12, 1956
CERTIORARI GRANTED NOVEMBER 13, 1956

INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Sixth Circuit		1
Appendix to appellant's brief consisting of proceedings in the United States District Court for the Eastern District of Michigan	1	1
Relevant docket entries	1	1
Complaint to cancel citizenship	2	1
Affidavit of Maurice A. Roberts	8	6
Answer	12	10
Excerpts from testimony of Stefena Brown:		
Cross	14	11
Direct	28	20
Cross	47	32
Ruling of Court	49	33
Excerpts from testimony of Stefena Brown, cross (resumed)	51	34
Opinion of the Court	57	38
Argument and submission	62	40
Judgment	62	41
Opinion, Allen, J	64	41
Petition for rehearing (omitted in printing)	71	48
Order denying petition for rehearing	72	49
Clerk's certificate (omitted in printing)	73	49
Order allowing certiorari	74	49

In the United States Court of Appeals for the Sixth Circuit

STEFENA BROWN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

APPENDIX TO APPELLANT'S BRIEF

1 *Relevant Docket Entries*

1953

Apr. 24—Complaint filed—Summons issued.
Sept. 9—Answer filed.

1955

Feb. 15—Trial by Court commenced. (Trial in progress on Feb. 16, 17, and 18, 1955.)
Feb. 18—Defendant cited for contempt of Court and found guilty.
Feb. 18—Defendant sentenced to imprisonment for six (6) months.
Motion for stay of sentence for 10 days granted.
Defendant released on $1,000.00 personal.
Feb. 23—Order of Cancellation filed and entered.
Feb. 28—Notice of Appeal filed.
July 28—File mailed to C. C. A.

2 In United States District Court for the Eastern District

Complaint to cancel citizenship

Filed Apr. 24, 1953

The United States of America, by Kenneth W. Smith, Assistant United States Attorney for the Eastern District of Michigan, herewith presents its complaint under and pursuant to Section 340 (a) of the Immigration and Nationality Act (66 Stat. 260; 8 U. S. C. A. 1451 (a)) against Stefena Brown, and respectfully represents:

1. That the said Stefena Brown was, prior to November 25, 1946, an alien, a native and citizen of Poland;

2. That the said Stefena Brown entered the United States on December 26, 1912, at New York, New York, under the name of Stefania Butryn and claims to have resided thereafter continuously in the United States to the date of her naturalization. She now resides in the United States and in this judicial district, her last known place of residence being 5031 Vinewood, Detroit, Michigan;

3. That on August 22, 1946, the said Stefena Brown filed Petition for Naturalization No. 219915 in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan; that in the proceedings that led to her naturalization the said Stefena Brown alleged:

(a) On October 15, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, made the following statements under oath:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations or societies. None."

* * * * * *

"15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

(b) On August 22, 1946, in testifying before naturalization examiners and executing her petition for naturalization, alleged under oath:

"It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of whom or which I am at this time a subject or citizen * * *."

"I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition * * * a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. * * * I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the

United States and well disposed to the good order and happiness of the United States."

(c) On August 22, 1946, when testifying before a naturalization examiner, alleged under oath that she had never been a member of the Communist Party.

4. That on November 25, 1946, the said Stefena Brown took an oath of allegiance to the United States in open court, which reads as follows:

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God."

Whereupon, the United States District Court for the Eastern District of Michigan, at Detroit, Michigan, relying upon the truth and good faith of the representations made by the said Stefena Brown in her petition for citizenship, and other naturalization forms required of a petitioner for naturalization, and in her oral testimony before the Naturalization Examiner, granted the prayer in her petition and entered its order admitting her to citizenship of the United States, and thereupon Certificate of Naturalization 6686059 was issued to her by the Clerk of the Court:

5. That the representations aforesaid made by the said Stefena Brown in her Petition for Citizenship and other naturalization forms required of a petitioner for naturalization, and before the Naturalization Examiner, as well as the oath to which she swore in open court were false and untrue, and at the time of making said representations and taking said oath the said Stefena Brown knew that they were false and untrue, in that the said Stefena Brown had been a member of a Communist Party of the United States and the Young Communist League, from 1933 to at least February 1937; that the Communist Party of the United States and the Young Communist League, during the period that said Stefena Brown was a member were organizations that:

(a) Advised, advocated or taught the overthrow by force or violence of the government of the United States:

(b) Advised, advocated or taught the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(c) Advised, advocated or taught the unlawful damage, injury or destruction of property;

(d) Advised, advocated or taught sabotage;

(e) Wrote, circulated, distributed, printed, published or displayed, or caused to be written, circulated, distributed, printed, published or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuance or display, written and printed matter which advised, advocated or taught the performance of the acts described in the subparagraphs immediately preceding and numbered (a), (b), (c), and (d);

(f) Promoted, influenced and advanced the political activities, public relations and public policy of the Union of Soviet Socialist Republics;

6. That at all times above mentioned the Young Communist League was the youth section of the Communist Party of the United States, and the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the Young Communist League and the individual members thereof, whether such decisions were contrary to the laws of the United States or not;

7. That the said Stefena Brown deliberately and intentionally made false statements and concealed the true facts in the course of her naturalization proceedings, as set forth in the preceding paragraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law;

8. That the Assistant United States Attorney institutes this proceeding upon the certificate of Maurice A. Roberts, Attorney for

the United States Immigration and Naturalization Service, showing good cause therefor, which affidavit is attached hereto and made a part hereof;

9. That the said order of admission to citizenship and certificate of naturalization for said Stefena Brown were procured by concealment of material facts and by wilful misrepresentation, in that:

(a) She was not a person of good moral character during the period required by law, inasmuch as she had made false statements in the proceedings leading up to her naturalization, as more particularly set out in paragraph 3 (Sec. 707 (a), USC Title 8);

(b) That she was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law, inasmuch as she had been a member of the Communist Party of the United States and the Young Communist League organizations, which to her knowledge had engaged in activities set forth in paragraph 5 (Sec. 707 (a), USC Title 8);

(c) That her naturalization was prohibited by Sec. 305 of the Nationality Act of 1940, in that she had been a member of the Communist Party and the Young Communist League during the period of ten years immediately preceding the filing of her petition, such organizations having engaged in activities prescribed by statute (Sec. 705, USC Title 8);

(d) That she did not intend in good faith to support the Constitution of the United States, to renounce and abjure, absolutely and entirely, all allegiance and fidelity to any foreign state or sovereignty and to bear true faith and allegiance to the United States, inasmuch as she intended to and did retain allegiance to the Communist International and to another foreign sovereignty (Sec. 735, USC Title 8);

7

Whereupon, plaintiff prays that an order be entered in this cause revoking and setting aside the order heretofore entered admitting the said Stefena Brown to citizenship upon Petition No. 219915 of the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, and cancelling Certificate of Naturalization No. 6686059, heretofore issued to said Stefena Brown on the grounds that it was procured by

concealment of material facts and wilful misrepresentation; and further ordering that the Certificate of Naturalization shall be delivered and surrendered to the Clerk of the United States District Court for the Eastern District of Michigan, and transmitted by him to the Commissioner of Immigration and Naturalization, Washington, D. C., and that the Clerk of this Court forthwith transmit a certified copy of this order to the Commissioner of Immigration and Naturalization, Washington, D. C., and that said Stefena Brown be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said Certificate of Naturalization and for such other and further relief as may be proper.

KENNETH W. SMITH,
Assistant United States Attorney.

April ——, 1953.

8 *Affidavit in Support of Complaint*

C-6686059-T

UNITED STATES OF AMERICA,
District of Columbia, ss:

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That Stefena Brown (also known as Sally Brown and Sally Butryn) filed a petition for naturalization in the United States District Court at Detroit, Michigan on August 22, 1946 and was admitted to citizenship by that court on November 25, 1946, receiving naturalization certificate No. 6686059.

(b) That in the proceedings which led to her naturalization, the said Stefena Brown

(I) On October 15, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, made the following statements under oath:

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations or societies. None."

* * * * *

"15. Within the past 5 years I *have not* been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government."

(II) On August 22, 1946, in testifying before naturalization examiners and executing her petition for naturalization, alleged under oath:

9 "It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegience and fidelity to any foreign prince, potentate, State or sovereignity of whom or which I am at this time a subject or citizen. * * *"

"I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition * * * a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government * * * I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States."

(III) On August 22, 1946, when testifying before a naturalization examiner, alleged under oath that she had never been a member of the Communist Party.

(c) That all of the allegations of said Stefena Brown, as set forth in the preceding subparagraph, were false and untrue as more particularly appears hereinafter.

(d) That the said Stefena Brown was a member of the Communist Party and the Young Communist League from 1933 to at least February, 1937.

(e) That the Communist Party and Young Communist League were organizations which during the period of the said Stefena Brown's membership therein:

I. Advised, advocated or taught the overthrow by force or violence of the government of the United States;

II. Advised, advocated or taught the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

III. Advised, advocated or taught the unlawful damage, injury or destruction of property;

IV. Advised, advocated or taught sabotage;

V. Wrote, circulated, distributed, printed, published or displayed, or caused to be written, circulated, distributed, printed, published or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuance or display, written and printed matter which advised, advocated or taught the performance of the acts described in the subparagraphs immediately preceding and numbered I, II, III, and IV.

VI. Promoted, influenced and advanced the political activities, public relations and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, the Communist Party and Young Communist League were sections of an international organization whose principal officers were citizens or subjects of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the Young Communist League and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That the said Stefena Brown deliberately and intentionally made false statements in the proceedings leading up to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That the naturalization of the said Stefena Brown was fraudulently and illegally procured in that:

(a) She was not a person of good moral character during the period required by law inasmuch as she had made false statements in the proceedings leading up to her naturalization, as more particularly set forth in paragraph 1.

(b). She was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law inasmuch as she had been a member of the Communist
11 Party and Young Communist League, organizations which to her knowledge had engaged in the activities set forth in subparagraph 1 (e).

(c) Her naturalization was prohibited by Section 305 of the Nationality Act of 1940, in that she had been a member of the Communist Party and the Young Communist League during the period of ten years immediately preceding the filing of her petition, such organizations having engaged in activities proscribed by the statute.

(d) She deliberately and intentionally made false statements in the proceedings leading up to her naturalization concerning her membership in the Communist Party and the Young Communist League, as more particularly set forth in paragraph 1; and that such false testimony was given by her for the purposes set forth in subparagraph 1 (g).

(e) She did not intend in good faith to support the Constitution of the United States, to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign state or sovereignty, and to bear true faith and allegiance to the United States, inasmuch as she intended to and did retain allegiance to the Communist International and the Union of Soviet Socialist Republics.

3. That good cause exists for the institution of a suit under Section 338 (a) of the Nationality Act of 1940, (8 U. S. C. 738 (a)) to set aside and cancel the naturalization of said Stefena Brown as having been fraudulently and illegally procured.

4. That the last known place of residence of said Stefena Brown is 5031 Vinewood, Detroit, Michigan.

(Signed) MAURICE A. ROBERTS,
Attorney.

Subscribed and sworn to at Washington in the District of Columbia this 20th day of August, 1952, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 60.26 of Title 8 of the Code of Federal Regulations to administer oaths.

(Signed) ALBERT E. REITZEL,
Assistant General Counsel.

12 In United States District Court

Answer

Filed Sept. 9, 1953

Now comes Stefena Brown, by her attorney, Harold Norris, and by way of Answer to Plaintiff's Complaint, shows unto this Honorable Court as follows:

1. Answering paragraph 1, defendant admits the allegations therein.

2. Answering paragraph 2, defendant admits the allegations therein.

3. Answering paragraph 3, defendant admits that on or about October 15, 1949, defendant did give certain answers to such questions as stated in paragraph 3 (a) of the Plaintiff's Bill of Complaint; that defendant admits the allegations as set forth in paragraph 3 (b) of Plaintiff's Complaint; that defendant denies the allegations as set forth in paragraph 3 (c) of Plaintiff's Complaint.

4. Answering paragraph 4, defendant admits the allegations contained therein, but has no information as to what factors the United States District Court for the Eastern District of Michigan, Southern Division relied on in admitting her to citizenship and leaves plaintiff to its proofs.

5. Answering paragraph 5, the defendant denies that any statements made by her were false or, if by chance, any of her statements were false, then they were made without knowledge that they were false: defendant denies knowledge as to the truth of the allegations stated in paragraph 5, concerning the character, activities, aims, policy and control of the Communist Party and leaves plaintiff to its proofs, and further, defendant denies that she was familiar with and approved of the alleged activi-
13 ties, aims, and teachings of the Communist Party as set forth in said Paragraph 5.

6. Answering paragraph 6, defendant not having sufficient knowledge with which to answer, leaves plaintiff to its proofs.

7. Answering paragraph 7, defendant denies the allegations made therein.

8. Answering paragraph 8, defendant denies that there is good cause for instituting these proceedings.

9. Answering paragraph 9, defendant denies that the Order of Admission to Citizenship and Certificate of Naturalization

issued to her were fraudulently and illegally procured and claims that she is a person of good moral character attached to the principles of the Constitution and well disposed to the good order and happiness of the United States.

Wherefore, defendant prays that these proceedings be dismissed and for such other and further relief as may be proper.

(Sgd.) Harold Norris.
HAROLD NORRIS,
Attorney for Defendant, 946 Penobscot Building, Detroit 26, Michigan. WOodward 1-1246.

Dated: Detroit, Michigan, August 31, 1953.

14 *Excerpts from transcript of testimony*

* * * * *

(Excerpts from the testimony of Stefena Brown, upon the trial of the above-entitled cause before the Honorable Ralph M. Freeman, District Judge, at Detroit, Michigan, commencing on February 15, 1955.)

Appearances:

Dwight K. Hamborsky, Esq., Assistant U. S. Attorney, appearing on behalf of the United States.

Harold Norris, Esq., appearing on behalf of the Defendant.

STEFENA BROWN, the defendant herein, called as a witness under the statute, by the Government, for cross-examination, and having been first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, testified as follows:

Cross-examination by Mr. HAMBORSKY:

Q. Would you repeat for the court at this time your name?

A. Stefena Brown.

* * * * *

Q. Did you ever pay any Communist Party dues during the period prior to 1946?

15 A. No.

Q. You were never a member of the Communist Party at any time prior to 1946; that is your testimony, isn't it?

A. That is right.

Q. Never a member of the Communist Party prior to 1946.

A. No.

Q. Did you ever collect any dues for the Communist Party?

A. No—just a minute; you said did I collect dues for what?

Q. For the Communist Party.

A. How can I collect when I didn't belong?

The COURT. You answer the questions. You are here to answer questions, not to ask them.

By Mr. HAMBORSKY:

Q. Do you know a Virgil Stewart?

A. No.

Q. Do you know a person by the name of William Nowell?

A. Yes.

Q. Do you know Bernice Baldwin?

A. No.

Q. Do you know Earl Reno?

A. Yes, he is the one who left his wife with three children.

Mr. HAMBORSKY. I will ask that the latter be stricken out as not responsive.

The COURT. Yes, I think it may be stricken out as not responsive.

By Mr. HAMBORSKY:

Q. Do you know Barry Cody?

16 Mr. NORRIS. In terms of that time question, does this apply?

Mr. HAMBORSKY. Yes, this applies in terms of the time question, prior to '46.

A. Well, I refuse to answer on the Fifth Amendment.

The COURT. What was that question again? I will ask the reporter to read that question.

(The question was read by the reporter.)

The COURT. Barry Cody? Barry C-o-d-y, is that right?

Mr. HAMBORSKY. Right.

(The answer was repeated by the reporter.)

Mr. HAMBORSKY. I contend that is contempt of court, your Honor. She cannot refuse to answer on the Fifth Amendment.

Mr. NORRIS. The question refers to the period any time before 1946?

Mr. HAMBORSKY. Correct.

Mr. NORRIS. Did you understand that, witness?

A. Yes, but I mean, do I know him before——

Mr. NORRIS. Before 1946.

A. Before 1946? I didn't know him—I don't know him in 1946.

By Mr. HAMBORSKY:

Q. Well then, you are now changing your answer?

A. Yes, I am changing my answer.

Q. You are changing your answer to "no," you did not know him before 1946?

17 A. (Witness nods in the affirmative.)

Q. You are positive about that?

A. Yes.

* * * * *

Q. Do you know whether your husband, William Brown, was ever a member of the Communist party?

Mr. NORRIS. If your Honor please, I want to object to that question. I think what we are talking about is with reference to the illegality in relation to her application, and how it related to her naturalization. Now I believe there is a question here raised with regard to her husband, and it involves the privilege, as well as the question of whether it is material. I believe on those two points, they are ground for the objection.

The COURT. I think she may answer.

A. Well, I refuse to answer. In the first place, I don't know just how to say it; but in the first place, a wife don't have to testify against her husband. Which way would you put it? I can't seem to get that straight.

Mr. NORRIS. I just raise the question that what I think the witness has in mind is that by answering that question, whether or not it gets into the area of privilege, and whether or not she would be required to testify against her husband in any fashion.

* * * * *

The COURT. The question was what? What was your question again?

Mr. HAMBORSKY. Will you read the question?

18 (The question was repeated by the reporter.)

A. I still think I don't want to answer the question.

The COURT. Why?

A. I don't think it is fair to put a wife in the position to answer for her husband. I just refuse to answer it.

The COURT. Well, there is nothing——

A. (Interposing.) In the first place, I understand one thing, but it is about me, and it is not about him, and you have no right to ask me about my husband, and I don't intend to answer that question. I don't think it is right.

The COURT. Well, you are basing your refusal to answer on privilege, on the privilege that is supposed to exist, a legal privilege, between husband and wife?

A. That is right.

The COURT. I do not see how that is a privileged communication.

A. I just don't see it.

The COURT. Just a minute. On what theory is that a privileged communication here in this suit?

(The court heard legal argument of counsel.)

* * * * *

The COURT. The question is whether she could testify in some adversary proceeding involving her husband. I can not see where privilege would attach here, where she is the one on trial.

I think I will direct the witness to answer. Answer the question.

A. Would you repeat that again?

Mr. HAMBORSKY. Read it back, so that there is no change of wording.

(The question was repeated by the reporter.)

A. When?

The COURT. Before 1946?

Mr. NORRIS. If your Honor please, I wonder if I may ask the indulgence of the court for a few minutes recess on this?

The COURT. All right. We will take our afternoon recess now.

(Short recess taken.)

The WITNESS. First, I would like to make apology. You know, this is a ticklish problem, to answer about your husband. Maybe I didn't know the right word. But I didn't mean to be that way

The COURT. That is all right. Do you want to answer the question?

A. Well, I guess I have to answer the question.

The COURT. What is your answer?

A. Well, my husband got out at the same time from the party when I did from the YCL.

The COURT. I do not think that answers the question.

Mr. HAMBORSKY. No, that is not an answer to the question.

The COURT. Will you read the question again to the witness?

(The question was repeated by the reporter.)

The COURT. You may answer that yes or no.

A. Yes.

The COURT. She does remember, she says. That is the answer.

* * * * *

The COURT. I will permit you to advise her of her rights, and we will see what happens.

Mr. NORRIS. Yes, your Honor. With the court's permission, I want to take this opportunity to state that you may, if you so choose, exercise your right to refuse to answer that question, under the Fifth Amendment to the Federal Constitution, on the ground that it may tend to incriminate you.

The COURT. You understood what your attorney said?

A. Yes.

The COURT. All right. Now, there is a question before you.

A. Would you please repeat that?

The COURT. Read the question. Re-state the question.

Mr. HAMBORSKY. Yes.

Q. Were you ever a member of the Communist party from the date of your naturalization, November 1946, until January 1, 1950?

A. Pardon me, but I don't think you said it that way as you are saying it now.

21 Q. I am asking you that now.

The COURT. Do you understand the question.

A. Yes, but I——

The COURT. All right: if you understand it?

A. I refuse to answer, on the Fifth Amendment.

By Mr. HAMBORSKY:

Q. On the ground that the answer that you would give would tend to incriminate you, is that what you are saying?

A. Yes.

Mr. NORRIS. Well, just a minute.

Q. And do you know that the answer that you would give would tend to incriminate you?

Mr. NORRIS. We are getting into a legal area now, as to what would tend to incriminate her. * * * I think the language of the decisions is that it is a legal question for the court to decide as to whether or not it is proper to invoke it.

The COURT. Is there an objection?

Mr. NORRIS. Yes, I object.

The COURT. I sustain the objection.

Q. Did you ever at any time pay Communist party dues to Bernice Baldwin?

A. May I say something? I don't even know Bernice Baldwin, whoever she is.

The COURT. What is that?

A. I don't even know her.

By Mr. HAMBORSKY:

Q. Can you answer the question?

22 The COURT. Will you read the question, please.

(The question was repeated by the reporter.)

A. I don't know how to answer this question.

The COURT. Why don't you know how to answer it?

A. The only thing, I could say no.

By Mr. HAMBORSKY:

Q. Did you ever belong to the McGraw Communist Club?

The COURT. Belong to what?

Mr. HAMBORSKY. The McGraw Communist Club.

A. I refuse to answer, on the Fifth Amendment.

Q. On the ground that the answer that you would give would tend to incriminate you?

A. That is right.

Q. Did you ever attend in 1948 an executive board meeting of the McGraw Communist Club held at 6580 Stanford Avenue in Detroit?

A. I refuse to answer, on the Fifth Amendment.

Mr. HAMBORSKY. Because I feel that there will probably be a series of these questions, your Honor, so that the answer is clear each time, she refuses to answer on the ground that the answer that you would give would tend to incriminate you?

A. That is right.

Q. All you have to do is to tell me "Fifth Amendment."

A. All right.

Q. And that will be your answer.

A. All right, thank you.

23 The COURT. When you refuse to answer, that will be because the answer might tend to incriminate you, is that right?

A. That is right. I will just say "Fifth Amendment".

Mr. HAMBORSKY. All right.

The COURT. Unless you specify otherwise?

A. Yes.

The COURT. All right.

By Mr. HAMBORSKY:

Q. At this meeting in 1948, were you appointed to represent the McGraw Communist Club at the Marxist School?

A. Fifth Amendment.

Q. How many executive board meetings of the McGraw Communist Club did you attend in 1948?

A. Fifth Amendment.

Q. How many members of the Communist party did you recruit into the McGraw Communist Club in 1948?

A. Fifth Amendment.

Q. Did you ever have an executive board meeting of the McGraw Communist Club at your home on Vinewood in Detroit?

A. The Fifth Amendment.

Q. How many Communist party meetings did you hold at your home, prior to 1950, in Detroit?

A. Fifth Amendment.

Q. Now, I will ask you a series of questions—and this is directed at clearing up some of the problems that we faced yesterday: When did you first meet Carl Winter?

24 Mr. NORRIS. I believe the question yesterday was in regard to the date of before or after 1946?

Mr. HAMBORSKY. I thought all of her answers referred to prior to 1946, and she corrected me; and instead of asking her now if she met them, she has testified now that she has met them and knows these people. All I want to know is when she met them, what year. I thought that would be an easy way to clear it up, because that her answers were prior to 1946.

* * * * *

The COURT. I think she may answer the question.

Mr. NORRIS. Well, if I may, your Honor, I would like to ask the court's permission to indicate to the witness that if she wishes to exercise that right under the Fifth Amendment, that she could.

The COURT. All right.

* * * * *

Mr. NORRIS. I would, with the court's permission, say this: Witness, I want to advise you that, as in previous circumstances, you may, if you so desire, exercise your right to refuse to answer that question under the Fifth Amendment to the Constitution, on the ground that it may tend to incriminate you.

The COURT. All right, now, what is the question?

By Mr. HAMBORSKY:

Q. When did you first meet Carl Winter?

A. The Fifth Amendment.

* * * * *

The COURT. The Court is of the opinion that the Blau
25 case, the authority of that case, would entitle the witness not to answer.

* * * * *

Mr. HAMBORSKY. I will leave it this way, your Honor. I was under the impression that she answered the question, and she understood the question as presented, and that her answer stands on the record. And if Mr. Norris wants to do something about it, I will not inquire any further along those lines. I will let the record stand as it is.

The COURT. All right.

* * * * *

The COURT. You instructed the witness that she might claim her constitutional privilege under the Fifth Amendment; and she did claim it, I think. And I sustained the witness in exercising her privilege, claiming her rights.

* * * * *

By Mr. HAMBORSKY:

Q. Do you know what the Michigan School of Social Science is?

A. No.

Q. What is the answer?

A. I don't know.

Q. Isn't it true that in 1948 you were in attendance at the Michigan School of Social Science?

A. I refuse to answer on the Fifth Amendment.

Q. Did you ever attend, in 1949, the Michigan School of Social Science here in Detroit, as a student?

A. I refuse to answer, on the Fifth Amendment.

26 Q. Isn't it true that you attended that school from early 1949 until the latter part of 1950?

A. Fifth Amendment.

Q. Isn't it true that the Michigan School of Social Science is a school conducted and run by the Communist party of the United States?

A. Fifth Amendment.

Q. Isn't it true that you were a member of the Communist Party at the time that you were granted naturalization, November, 1946.

* * * * *

A. To the best of my knowledge I was not.

Q. Aren't you sure about it?

A. Yes, I am sure about it.

Q. Well then, the answer is that in November 1946, you were not a member of the Communist Party?

A. Yes.

Q. Is that your answer?

A. Yes.

* * * * *

Mr. HAMBORSKY. You may cross-examine.

Mr. NORRIS. If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on on direct.

The COURT. All right. That is all now.

* * * * *

27 DETROIT, MICHIGAN, THURSDAY, FEBRUARY, 17, 1955

* * * * *

Mr. HAMBORSKY. That is the Government's case, your Honor.

The COURT. All right.

Mr. NORRIS. I would like to call Mrs. Stefena Brown.

The COURT. All right.

MRS. STEFENA BROWN, the defendant herein, was thereupon called as a witness in her own behalf, and having been previously duly sworn, testified as follows:

The COURT. Let the record show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will be not necessary to swear her as a witness again.

Mr. HAMBORSKY. So that the record will be straight, she is now testifying as a defense witness, is that right?

The COURT. Yes, I think that is right, is it not, Mr. Norris?

Mr. NORRIS. That is right, your Honor.

The COURT. You are calling her now as your witness?

Mr. NORRIS. That is right, your Honor.

The COURT. All right.

28 Mr. Norris. The plaintiff has rested.

Direct examination by Mr. Norris:

Q. Your full name is Stefena Brown?

A. That is right.

Q. Your address?

A. 5031 Vinewood.

Q. What is your occupation?

A. Waitress.

Q. And how old are you, Mrs. Brown?

A. Forty-four.

The Court. Forty-four?

A. That is right.

Q. You testified that you were about two years old when you were brought to the United States, is that right?

A. That is right.

Q. And you have been in the United States at all times since that time?

A. That is right.

Q. How far did you go in school, Mrs. Brown?

A. The seventh grade.

Q. You have been to the seventh grade?

A. Yes, that is right.

Q. And when did you first begin to work?

A. When I was 15.

29 Q. Were you ever a member of the Young Communist League?

A. Yes, I was.

Q. From what time did your membership in the Young Communist League begin, to the best of your recollection?

A. It began in depression time, when people were unemployed.

Q. And that was when, in terms of years, if you recall?

A. Oh, I believe in 1929 and 1930.

Q. When did you begin to become a member of the Young Communist League?

A. I believe it was around 1929 and 1930.

Q. Well, could you give us the time, approximately?

A. I would say in the early '30s.

Q. In the early '30s?

A. That is right.

Mr. Hamborsky. What was that last?

The Court. In the early '30s, she said.

Mr. Norris. The early '30s.

The COURT. Did she say the early '30s, or early in 1930?

Mr. HAMBORSKY. I have got "'29 or '30," and now I have got "early '30s".

Mr. NORRIS. I was trying to make it more specific.

The COURT. I didn't get the answer either. Was your answer the early '30s, or early in 1930?

A. Well, 1930.

The COURT. All right.

30 The WITNESS. Did it sound like my age?

The COURT. What is that?

The WITNESS. Did it sound like my age?

By Mr. NORRIS:

Q. When did you end being a member of the Young Communist League?

A. In '35, about the first of the month, 1935, in the first of the month.

Q. Just what do you mean, the first of the month in 1935?

A. Well, that is when I stopped all activities.

The COURT. He means what month are you talking about?

A. January.

By Mr. NORRIS:

Q. January of nineteen thirty and five?

A. Yes.

The COURT. All right.

By Mr. NORRIS:

Q. Now, between 1930 and the first month in 1935, what did your activities consist of, in the main, while you were a member of the Young Communist League?

A. As I could remember, it was unemployment insurance. When people were hungry, I seen that they were taken care of, helping them get relief. And then when they were thrown out of the house, I tried to help them see that they would have a home to live in. That was my way of working in the Young Communist League.

Q. Other than the period from 1930 through the first month of 1935, did you engage in any Communist activity of any kind?

A. Would you repeat that?

31 Q. I have not finished my question.

The COURT. She asked you to repeat it. She did not hear the first part of it. Start over again.

By Mr. Norris:

Q. Other than the period from 1930, through the first month of 1935, did you engage in any Communist Party or Young Communist Party activity at any time, prior to 1946, when you were naturalized?

A. From 1935?

Q. Outside of the period after 1935, January 1935, and then until 1946, did you engage in any activity——

A. No I haven't. And my reason was I had to look after myself.

Mr. Hamborsky. Your Honor, I know that I cannot object as being not responsive, but on the other hand, I think, to protect the record, she has answered the question; and what she is doing now is just elaborating.

The Court. I think she has probably answered the question.

By Mr. Norris:

Q. Now, what were the reasons that you ended your Communist activity with the Young Communist League, in January of 1935?

A. Maybe because—it was because I was hungry, and unemployed, and I had to look after myself.

Q. Well, when were you married?

A. I was married in 1934, January 8.

Q. January 8, 1934?

32 A. Yes.

Q. Is that right?

A. Yes, that is right.

Q. And where were you married?

A. Pontiac, Michigan.

Q. Were you living in Pontiac, Michigan, at the time?

A. At the time I lived there, six months before I was married, and I lived one month after, after I was married.

Q. You were married on January 8, 1934, is that right?

A. That is right.

Q. And for six months before that time you were living in Pontiac, Michigan?

A. Yes.

Q. And then for about one month afterwards?

A. That is right.

Q. And then you returned to Detroit?

A. That is right.

Q. In other words, between January 1934 and January 1935 at January 31, 1935, you discontinued any activity in the Young Communist League and any Communist activity, is that right?

A. Yes, that is right.

Q. Did your husband likewise discontinue any Communist activity during that same period?

A. He has. He has been expelled.

Q. You say he was expelled?

33 A. Yes.

Q. From the Communist Party?

A. That is right.

Q. To the best of your recollection, when did that occur?

A. In January, in the first of January of 1935—I mean as far as—yes, 1935, in January.

The COURT. I didn't quite get that. You are talking now about your husband?

A. That is right.

The COURT. You say he was expelled?

A. That is right.

The COURT. And when?

A. In 1935, the first of the month.

The COURT. Expelled as a member of the Communist Party?

A. That is right. And he never been in the Communist Party since then.

By Mr. NORRIS:

Q. How do you know he was expelled?

A. We received a letter.

Q. What did that letter say, to the best of your recollection?

A. That he was——

Mr. HAMBORSKY. Well, I object to that. I think the best evidence is the letter.

The COURT. If the letter is available, it would be. Do you have the letter?

34 Mr. NORRIS. No, we do not have it. I believe she could testify for whatever it is worth.

The COURT. I will sustain the objection, on the showing not made now, that the letter would be the best evidence, if it is available.

Mr. NORRIS. Well, I will put it this way: The reason you state to this court that your husband was expelled was because you received word, in the form of a letter, of that expulsion, is that right?

A. That is right.

Q. I won't ask any further questions about that. After you were married in 1934, or 1935, were you unemployed at any time?

A. Yes.

Q. And what did you do to earn a living?

A. Well, when I remember, I did get a job; they were hiring at Ternstedt's and I worked there a couple of months, and I got laid off.

Q. Did you have difficulty securing employment?

A. Yes, I did.

Q. You completed an alien registration form. What was the date of that?

Mr. HAMBORSKY. In about 1940, and that looks like it.

By Mr. NORRIS:

Q. On or about October 15, 1940, you completed an alien registration form, is that right?

A. That is right.

Mr. NORRIS. It has been introduced here.

Q. (Continuing.) And in that form you stated as follows:

"I am or have been, within the past five years, or intend to be engaged in the following activities. In addition to other information, list memberships or activities, club organizations, or societies." And you answered "None." And that was the answer that you gave at that time, is that right?

A. That is correct.

Q. Was that a true answer?

A. That was a true answer.

Q. You also stated, to question 15 on that form, "Within the past five years, I have not been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government." Was that a true answer given to that question?

A. That was a true answer.

Q. Now, on or about July 16, 1946, did you fill out a form called "Application for Certificate of Arrival, and Preliminary Form for Petition for Naturalization"?

A. Yes, sir.

Mr. HAMBORSKY. I think that is Exhibit 1.

Mr. NORRIS. Yes, I believe that is Exhibit 1.

Q. And the Government had shown you this form before, and you identified your signature here, is that right?

A. Yes, I have.

Q. As Question 23 in that application, we find the wording: "Do you fully believe in the form of government of the
36 United States?" And you gave the answer "Yes"?

A. Yes.

Q. Was that a true answer?

A. That was a true answer.

Q. What did you understand was the meaning of "form of government of the United States"?

A. The form of government, the way I see it is, that you defend your government. You are the people of this government, and fight, if it is necessary, for your country.

Q. You also were asked Question No. 25: "Have you read the following Oath of Allegiance?" And you answered "Yes."

A. Yes, I have.

Q. The oath reads as follows:

"I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or of which I have heretofore been a subject or a citizen; that I will support and defend the Constitution and laws of the United States of America, against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion. So help me God!"

Now, did you willingly take that oath?

A. Yes.

Q. And did you take that oath without mental reserva-
37 tion or purpose of evasion?

A. What?

Q. Did you have any mental reservation, or did you take that oath with any thought in mind of evading that oath?

A. No, I never did. I never considered myself anything else but American. How can I consider, when I was only two years old? What does another country mean to me? I don't know any other country.

Mr. HAMBORSKY. I think she has answered it, and I move the answer be stricken.

The COURT. I think she has answered it.

By Mr. NORRIS:

Q. Question No. 26: "If necessary, I am willing to take up arms

in defense of this country?" And you answered that question "Yes." Was that a true answer to that question?

A. That was very true.

Q. Are you willing to take up arms in defense of this country, in the event of any hostility between the United States and Russia?

A. Yes.

Q. Regardless of whatever the reason may be for any hostility between the government of the United States and the Government of Russia?

A. That is correct.

Q. In Question 28 you were asked: "Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage"? And you answered "No."

Was that a true answer to that question?

A. That was a true answer.

38 Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing anything. I believe in fighting for this country. I like this country. I never told anybody I didn't.

Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

A. Teach?

Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

A. No, I never did.

Q. Did you ever advocate that?

A. No.

Q. Did you ever say that we should?

A. No, I never did.

Q. To your knowledge, did you ever belong to any organization that taught or advocated anarchy or the overthrow of the existing government in this country?

A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

Q. Are you attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States?

A. That, I am.

Q. What do you understand by that? What do you understand by those words "attached to the principles of the Constitution"?

A. The way I understand this, when my country needs me, I fight for it and do what is right among the people.

Q. Now, in your petition for naturalization, which is Government's Exhibit No. 2, and is dated August 22, 1946, you stated the following:

"I am not and have not been for a period of at least ten years immediately preceding the date of this petition, an anarchist nor a believer in the unlawful damage, industry or destruction of property or sabotage, nor a disbeliever or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching belief in or opposition to organized government."

Now, when you made that——

Mr. HAMBORSKY. What is that section of the exhibit? What exhibit number?

Mr. NORRIS. I believe this is No. 15, Question 15, I mean, or No. 15. That is Government's Exhibit 2.

Q. Now, when you stated that as your intention, and feeling and belief, was that a true statement?

A. That was correct; I don't believe in destroying. I believe in helping.

Q. When you appeared for examination by the Inspector in regard to your petition for naturalization, you were asked certain questions, were you not, with regard to that petition?

A. Yes.

Q. Now, were you asked the question, on or about August 22, 1946, as to whether or not you were a member of a Communist or Fascist organization?

A. I was not. All I was asked, was, who was the President——

Mr. HAMBORSKY. Well, I think she has answered it.

The WITNESS. Well, I would like to tell what I was asked. I was only asked questions, and that was who was the President of the United States.

Mr. HAMBORSKY. Just a minute. I think you have answered the question.

The COURT. I think you have answered it.

By Mr. NORRIS:

Q. What questions were you asked, to the best of your recollection?

A. Who was the President of the United States, and will I fight for my country.

Q. And did you answer those questions?

A. Yes, I have.

Q. Now, why do you state at this time that those were the only questions that you recall being asked of you?

Mr. HAMBORSKY. Well, I will object to that as leading and suggestive.

The COURT. No, I do not think it is.

Mr. HAMBORSKY. This is direct examination now, your Honor.

41 The COURT. I know.

Mr. HAMBORSKY. I have allowed him a lot of leeway here.

The COURT. No, I do not think so. I do not think there has been any unusual leeway. I think you may proceed.

A. Well, it is just like I told you, this is the book that my Mother gave me to study; and this book, I read this for months, and it is hard for me because I am not a good reader. My husband sat up with me and helped me study this book, and studied the Constitution of the United States, and it was really a thing for me. I woke up the night before, and stayed up half the night, before I had to go and answer my questions; and it was so funny to me, that he never asked me those questions that was all in this book.

Q. Now, when you filed your application for a certificate of arrival, and preliminary form for petition for naturalization, I believe you found the question which said: "What have you done to prepare yourself for examination on the government of the United States?" And you replied, "Studied the booklet, 'How to Become a Citizen of the United States,' textbook of American citizenship."

Is that the booklet that you have there?

A. Yes, sir, right here [indicating].

Mr. NORRIS. Mark this, please.

(The book referred to was marked "Defendant's Exhibit A.")

Mr. NORRIS. If your Honor please, I offer this as Defendant's Exhibit A, in evidence.

42 The COURT. Submit it to counsel.

(Exhibit A handed to Mr. Hamborsky.)

The COURT. I think we will take a short recess. We have a jury here, ready for a jury trial to start, and I would like to get at it

just as soon as possible. If this case is going to continue much longer, I would feel obliged to continue this until maybe some later time, and proceed with that jury trial.

We will take a short recess.

(Whereupon a short recess was taken.)

Mr. NORRIS. If your Honor please, before the Court recessed, I had offered for admission Defendant's Exhibit A.

The COURT. Is there any objection?

Mr. HAMBORSKY. Your Honor, I would like to know the purpose of offering it. I do not think it is material, from what has been said, or properly identified.

The COURT. What is the purpose of it?

Mr. NORRIS. If your Honor please, there was testimony by one of the parties who acted as the inspector, I believe Mr. Austin, that he asked certain questions of this witness with regard to her petition for naturalization. There has been a denial of him asking those questions. We have a controverted question. The point is that she remembers that, because of her having in mind the questions, and information in this particular booklet, and that what she was asked did not go into this particular booklet. In other words, this is——

Mr. HAMBORSKY. Criterion of what?

43 The COURT. I will admit it.

Mr. NORRIS. It was a criterion of memory, your Honor.

The COURT. On what theory?

Mr. HAMBORSKY. On the theory that this book proves what she knows that——

The COURT. No, not that it proves, but it tends—it is some evidence to substantiate the reason that she gave for remembering that Mr. Austin did not ask. That was the theory that it is offered upon.

Mr. HAMBORSKY. All right, if that is the theory.

The COURT. That is the theory, is it not?

Mr. NORRIS. Yes, your Honor.

Mr. HAMBORSKY. And for that limited purpose. I will withdraw my objection.

The COURT. All right. How do you describe that, for the record?

Mr. NORRIS. It is Defendant's Exhibit A, and it is entitled, "American Citizenship," published by Legal Aid Bureau of the Detroit Bar Association.

The COURT. This pamphlet?

Mr. NORRIS. Yes, your Honor.

Mr. HAMBORSKY. May I say something in regard to that pamphlet? Enclosed with the pamphlet is a typewritten sheet. I do not think that is properly a part of the exhibit.

By Mr. NORRIS:

Q. Mrs. Brown, I show you this piece of paper with typewriting on it, and ask you to identify what that is?

41 A. That was found on this book of American Citizenship. This is a paper—it is a thing that is written about senators and House of Representatives, and, you know, how long—you know, it is just something that I studied from.

Q. You say this was something that you studied from?

A. Yes. I studied from that too, you know.

Q. Would it be right to say that this is just a summary of some of the information?

Mr. HAMBORSKY. Well, I will object to that.

Mr. NORRIS. I am trying to help the witness identify it. I believe I am entitled to this, your Honor.

A. Let me explain this here. This seems like it was an awful hard subject for me to remember, and I had that written out for me, so that I could try to, you know, memorize that, what is written on that. It was a very hard subject. That is what I was afraid of more than anything else in the book, you know. That was why I had it. It always has been in that book since I studied it, and I left it that way in that book, and I never took it out. You can see that. That was the hardest thing for me to memorize.

The COURT. There is no question before you now. You are just repeating over and over again. Let us get on a little bit.

By Mr. NORRIS:

Q. This is a summary of the information with regard to citizenship?

A. Yes.

Q. Is that right?

45 A. That is right.

Q. You say that was in the book, is that right?

A. Yes.

Q. And it was in the book when you obtained it, when you got it?

A. This is the thing—I had that.

Q. You had this made up?

A. Yes.

The COURT. If you offer it, offer it as a separate exhibit. Then we can find out.

Mr. NORRIS. I want to identify it.

Mr. HAMBORSKY. Let me ask a couple of questions.

The COURT. Let him mark it.

Mr. NORRIS. Mark this, please.

(The document referred to was marked "Exhibit B.")

Mr. NORRIS. That is the typewritten part that is marked.

By Mr. HAMBORSKY:

Q. Did you type this?

A. No.

Q. Who did you get it from?

A. I am not sure. I can't remember exactly who typed it. It might be that my husband had typed it for me.

The COURT. Let me ask you, is it something that you studied when you were getting ready for the examination on citizenship?

A. That is all what it is. That is all it is. It was the important questions for me to answer, and that was what I studied from.

The COURT. All right. Is there any objection?

46 Mr. HAMBORSKY. If it is offered for the same limited purposes as the other was, I have no objection.

The COURT. It is offered for that same purpose, isn't it?

Mr. NORRIS. That is right.

The COURT. It may be admitted.

Mr. NORRIS. Thank you, your Honor.

The COURT. What is that, Exhibit B?

Mr. NORRIS. Yes, your Honor.

By Mr. NORRIS:

Q. You say then, to the best of your recollection, you do not recall the question of "Are you a member, or have you been a member of a Communist or Fascist organization", being asked you at the time you filed your petition, is that right?

A. That is correct.

The COURT. You say that question was not asked of you?

A. That was not asked of me.

By Mr. NORRIS:

Q. Do you know Virgil Stewart?

A. No, I don't.

Q. Did you ever know Virgil Stewart?

A. I never seen him until the day he was in court. What was that, the first day?

Q. The first day of this trial?

A. Yes, the first day of trial, he sat there and smiled, and I smiled back at him.

Mr. HAMBORSKY. I object to that. I think that is surplusage.

47 The COURT. That is probably true. It is harmless error. I do not mean to say that it is harmless error, but it is just not of any particular importance. However, I will let it stand.

By Mr. NORRIS:

Q. Now, did you ever attend any closed Young Communist League meetings, or any Communist meetings with Virgil Stewart being present?

A. No, I have not.

Q. You have never seen this man?

A. I have never seen that man in my life.

Q. Did you ever meet Bernice Baldwin?

A. I never met Bernice Baldwin.

Q. Did you ever attend any closed Communist meeting with Bernice Baldwin being present?

A. How could I, when I didn't even know her.

Q. And you never met her at any time?

A. Not at any time.

Mr. NORRIS. No further questions.

* * * * *

Cross-examination by Mr. HAMBORSKY:

Q. Are you now or have you ever been a member of the Communist Party of the United States?

48 A. Fifth Amendment.

Mr. HAMBORSKY. I contend, your Honor, that is in contempt of court at this time.

The COURT. Isn't that right, Mr. Norris? Now that she has taken the stand, wouldn't she waive her privilege? Wouldn't she waive any privilege of claiming any right not to answer under the Fifth Amendment?

Mr. NORRIS. No, your Honor, I do not believe that is a correct statement of the law.

The COURT. I think there is some case law on it.

(The Court heard legal argument of citation of authorities.)

The COURT. I think what I will do is this: Can you proceed with the rest of your cross-examination of this witness, and I will reserve my ruling for the time being on whether or not I will compel her to answer.

Mr. HAMBORSKY. Yes, your Honor.

* * * * * *

The COURT. I think we will proceed with the rest of the testimony, and then I will rule on this matter.

FEBRUARY 16, 1955, 10 O'CLOCK A. M.

* * * * * *

The COURT. The Court holds that the defendant having
49 taken the stand in her own defense, has waived the right to invoke the Fifth Amendment, and I will permit the witness to answer the question.

By Mr. HAMBORSKY:

Q. The question that I asked was: Mrs. Brown, are you now or have you ever been a member of the Communist Party?

A. The Fifth Amendment.

The COURT. I direct you to answer the question. I have already ruled on that point.

A. I am sorry, your Honor, I just cannot answer that question. I am under the Fifth Amendment. I am sorry I have to do that.

By Mr. HAMBORSKY.

Q. In other words, Witness, you are refusing to answer the question?

A. That is right.

The COURT. The Court has just ruled that you having taken the stand in this case in your own defense, by so doing you have waived the right to invoke the Fifth Amendment. And I have just informed your counsel, and you, that you must answer the question. Now, if you do not answer the question, the Court will hold you in contempt of court.

The WITNESS. Well, that is how it has to be, because I won't answer.

The COURT. You will not answer?

The WITNESS. I won't answer.

Ruling of Court

The COURT. All right. Then, as a result of that, the Court finds that you are in contempt of this court for refusal to answer the question.

50 Mr. NORRIS. If your Honor please, if I may make a statement at this point. I do not think the witness intends to be contemptuous, but she does feel that there is some question of law of some magnitude with regard to the ruling, and she would

want me to at least make that statement on her behalf at this time. I understand quite clearly that the court directed her to answer. She does not intend to be contemptuous; and I do not think anything she has said or done in relation to this case thus far indicates any ill feeling in regard to the Court. But there is a question of some substance and magnitude here with regard to the fundamental right in relation to this type of proceeding, in this case. I believe she wants me to make that statement.

The COURT. This is not a question of whether she intends to be contemptuous. She is in contempt. She refuses to answer this question, after I have directed her to answer, and explained the reason why she should answer. I have given her plenty of opportunity to understand what the situation is. I have explained to her the reason for my ruling, and I have explained to you the reason for my ruling. I afforded you the opportunity yesterday, and again last night, to present any law that you might find that would touch on this question that would seem to indicate that the law might be other than the Court has interpreted it. The Court feels that the same rule applies in a civil suit as it does in a criminal case, and even for perhaps a stronger reason.

Therefore, the witness, if she refuses to answer the question, as she has refused to answer the question, she is now in contempt of this court.

51 I do not want any misunderstanding as to the ruling of the court.

Mr. HAMBORSKY. May I continue, your Honor?

The COURT. You may continue. I will impose punishment for contempt of court later.

By Mr. HAMBORSKY:

Q. Isn't it true that in 1947 you were a member of the McGraw Communist Club, District No. 7 of the Communist Party of the United States?

A. The Fifth Amendment.

The COURT. I direct you to answer.

A. I am sorry, your Honor, I just won't answer.

The COURT. All right. Then you are in contempt of court for refusing to answer that question.

By Mr. HAMBORSKY:

Q. Do you know what the Michigan School of Social Sciences is?

The COURT. Answer the question.

A. I don't know.

Q. Do you know Barry Cody?

A. I refuse to answer, on the Fifth Amendment.

The COURT. I direct you to answer.

A. I am sorry, your Honor, I can't answer.

The COURT. All right. I will say this, that each of the questions, or at least as to this question, and the previous questions you refused to answer, and any further questions that you then refuse to answer, which I do direct you to answer, that the
52 Court holds that you will be in contempt of court, for and if you do refuse to answer any other questions which the Court directs you to answer.

By Mr. HAMBORSKY:

Q. Isn't it true that Barry Cody and you were in the same Communist Party unit as early as 1945?

A. That is not true.

Q. Were you ever in any Communist Party club with Barry Cody?

A. I refuse to answer; the Fifth Amendment.

Q. What year was the first time that you were a member of the same Communist Party Club as Barry Cody?

A. The Fifth Amendment.

The COURT. I direct you to answer.

A. I am sorry, your Honor, I just cannot answer.

By Mr. HAMBORSKY:

Q. Isn't it true that there was an executive board meeting of the McGraw Communist Club held at your house in 1948?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry.

The COURT. Do you refuse to answer the question?

A. I refuse to answer it.

By Mr. HAMBORSKY:

Q. Isn't it true that you have paid Communist Party dues in the McGraw Communist Club?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse?

53 A. I refuse to answer.

By Mr. HAMBORSKY:

Q. Did you attend an affair of the Communist Party celebrating the birthday of William Z. Foster, national chairman of the Communist Party?

The COURT. Did you give a date for that, Mr. Prosecutor?

Mr. HAMBORSKY. At any time that it was celebrated.

A. I never did.

Q. You never did?

A. No.

Q. What about February 24, 1951, at the Jewish Cultural Center, 2705 Joy Road, Detroit, Michigan.

A. I refuse to answer. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse to answer the question?

A. I refuse.

By Mr. HAMBORSKY:

Q. Were you a student in the class at the Michigan School of Social Science, in Detroit, in 1948 and 1949?

A. The Fifth Amendment.

Q. Do you refuse to answer the question?

A. That is right.

The COURT. I direct you to answer.

A. I am sorry, your Honor. I refuse.

By Mr. HAMBORSKY:

Q. Isn't it true that the Michigan School of Social Science is a school run by the Communist Party?

54 The COURT. Did you hear the question?

A. Yes.

The COURT. Did you understand it?

A. Yes. I am thinking.

The COURT. Answer it.

A. I will, as soon as I get——

The COURT. What is that?

The WITNESS. I will as soon as I think it over.

The COURT. That is not anything that requires very much thought, in the opinion of the Court. Either you know it, or you don't know it.

A. That is what I am trying to think.

The COURT. There has been a constant delay in your answers.

A. I don't know it.

The COURT. If you don't know it, you can say so. There have been constant delays in your answers to questions, that has prolonged the trial of this case away beyond any reasonable length of time that should have been required.

By Mr. HAMBORSKY:

Q. Did you attend a meeting of the Lænin——

The COURT. What was the answer to the last question?

Mr. HAMBORSKY. I think she answered it, that she didn't know.

The COURT. All right.

Q. Was that your answer?

55 A. That is right.

Q. Did you attend a meeting of the Lænin Memorial sponsored by the Communist Party at any time?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor.

The COURT. Do you refuse?

A. Yes.

The COURT. Do you refuse?

A. Yes, I said I refuse.

By Mr. HAMBORSKY:

Q. In 1948 did you hold Communist Party membership card No. 72066?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I refuse to answer that one.

Q. Did you hold Communist Party membership card No. 72061 in 1949?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I refuse to answer, your Honor.

By Mr. HAMBORSKY:

Q. Isn't it true that from about 1940 on, you never did leave the Communist Party?

A. As I stated before, I did not belong. I belonged to the Young Communist League, not to the Communist Party, and I dropped out in 1935.

Q. Would you answer the question.

56 Mr. NORRIS. If the court please, I think that is an answer.

The COURT. No, I do not think that is a direct answer.

Mr. NORRIS. There are several questions in that question.

The COURT. The answer is not responsive. Answer the question.

Mr. NORRIS. Would you have the question repeated?

The COURT. Yes, read it.

(The question was repeated by the reporter.)

A. Well, to answer I have to think.

The COURT. We have waited, I think, perhaps 30 seconds since that question was asked; we have waited approximately 30 seconds when the same question was asked just a few moments ago.

A. Well, your Honor, I did explain. I didn't belong to anything since 1935.

The COURT. You did not belong to what?

A. To the Young Communist League.

The COURT. That was not the question. The question was in respect to the Communist Party.

A. I did not belong to it.

By Mr. HAMBORSKY:

Q. You mean you never belonged to the Communist Party?

A. The Fifth Amendment.

The COURT. Answer the question.

A. I am sorry, your Honor, but I refuse to answer.

Mr. HAMBORSKY. That is all.

* * * * * * *

57 In United States District Court

Opinion

* * * * *

I have one other matter to dispose of. This morning the defendant refused to answer certain questions submitted or propounded to her by the Government. She refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment. At that time I cautioned the witness and explained to her that she was required to answer; that she had waived the benefit of the Fifth Amendment, she had waived the right to claim any privileges under the Fifth Amendment, by reason of having testified as a witness in her own behalf.

After I held the defendant in contempt of court a number of other questions were propounded, and to those questions the defendant also refused to answer, relying on the Fifth Amendment, her right not to testify by reason of the protection afforded her by the Fifth Amendment.

I repeat again, and I find again that the defendant is in contempt of this Court for refusing to answer the questions that the Court directed her to answer. In this connection I will now dictate upon the record an order which the Court feels is necessary under the rules of this Court. This order is to be transcribed and presented to the Court for signature, and to be entered of record.

In this case the defendant was called to the witness stand as the Government's first witness, under the court rule; and during her examination the defendant refused to answer certain questions propounded to her by the District Attorney, claiming her privi-
lege not to answer by reason of the Fifth Amendment, and
58 the Court allowed her to claim that privilege. At the close of her examination as a Government witness under the court rule, she was submitted for cross-examination by her own counsel, who stated at that time as follows:

"If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on on direct.

"The COURT. All right. That is all."

When the Government rested its case, defendant's counsel, Mr. Norris, stated as follows:

"I would like to call Mrs. Stefana Brown.

"The COURT. All right. The record may show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will not be necessary to swear her as a witness again.

"Mr. HAMBORSKY. For the purpose of the record, they offer the witness to testify as a defense witness.

"The COURT. Yes, I think that is right; is it, Mr. Norris?

"Mr. NORRIS. That is right, your Honor.

"The COURT. You are calling her as your witness?

"Mr. NORRIS. That is right. The plaintiff has rested."

I have quoted there from the transcript of what appears at the close of the Government's examination of the defendant
59 when called as a Government witness, and also what occurred at the close of the Government's case.

The defendant was then examined by her own counsel at length with respect to the subject of this suit, and at the end of such direct examination the District Attorney asked of the defendant certain relevant and material questions with respect to these pro-

ceedings, on a number of which questions the defendant refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment.

The Court directed the defendant to answer the questions, and she refused.

The Court directed that the testimony involved on the cross-examination of this witness by the District Attorney be transcribed and made a part of the record in this case, and this order, so that counsel and any reviewing court may see exactly what occurred and the nature of the questions asked of the defendant.

The Court is of the opinion that the defendant, in taking the stand as a witness in her own behalf, waived the right to exercise her privilege not to answer questions which might tend to incriminate her, by reason of the Fifth Amendment. And, having refused to answer a number of questions asked of her by the District Attorney, and having been directed by the Court to answer the questions, and having refused to answer the questions, the Court finds the defendant is in contempt of this Court.

Of course, this is a contempt that occurred within the presence of the Court.

Having found the defendant in contempt of Court, the
60 Court, therefore, shall impose punishment for such contempt.

It is the sentence of this Court that the defendant be committed to the custody of the Attorney General of the United States for a period of six months, for this contempt of Court.

That is all.

Mr. NORRIS. If your Honor please, may I ask for a stay on that.

* * * * *

62 In United States Court of Appeals for the Sixth Circuit

Cause argued and submitted

April 2, 1956

This cause is argued by George W. Crockett, Jr., for appellant and by Dwight K. Hamborsky for appellee and is submitted to the court.

In United States Court of Appeals

Judgment

May 18, 1956

Appeal from the District Court of the United States for the Eastern District of Michigan,

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

64 No. 12628

United States Court of Appeals for the Sixth Circuit

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division

STEFENA BROWN, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Opinion

May 18, 1956

Before ALLEN, MARTIN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. This appeal arises out of a judgment of conviction of criminal contempt rendered by the United States District Court because of appellant's refusal in a denaturalization proceeding to answer certain questions on cross-examination following her direct testimony as a witness. Her refusal was predicated upon the Fifth Amendment to the Federal Constitution.

The government, April 24, 1953, filed a complaint for cancellation of appellant's citizenship, alleging that appellant at the time of her registration pursuant to the Alien Registration Act of 1940, had knowingly made false representations as to her membership in any organization devoted in whole or in part to influencing or furthering the political activities of a foreign government. It was charged that appellant on August 22, 1946, in testifying before the naturalization examiners under oath made false state-

ments with reference to membership in the Communist Party and to the fact that she had not been a member of, or affiliated with, any organization teaching disbelief in, or opposition to, organized government. The complaint averred that as a result of con-
65 cealment of material facts and false representations appellant was admitted to citizenship and took the oath of allegiance to the United States, although she had been a member of the Communist Party of the United States and Young Communist League from 1933 to at least February 1937, and during this period these organizations advocated or taught the overthrow by force or violence of the government of the United States. Appellant's answer denied any fraud or misrepresentation on her part in the proceedings.

At the trial appellant was called as a witness by the government under Rule 43 (b) of the Federal Rules of Civil Procedure. She answered questions covering the period prior to her naturalization in 1946, but refused to answer questions relating to Communism or Communist activity subsequent to 1946, claiming her privilege under the Fifth Amendment. The court as to such questions sustained appellant's claim of privilege. She testified that she was never a member of the Communist Party at any time prior to her naturalization, that prior to 1946 she did not know three witnesses for the prosecution, but that she knew two others. At the conclusion of the government's examination defendant's counsel called appellant in direct examination as a witness for the defense. She testified that she belonged to the Young Communist League from 1930 until January, 1935, at which time she left the Young Communist League and from then until her naturalization in 1946 she did not engage in any Communist Party or Young Communist League activities. She reaffirmed the truthfulness of her answers in the naturalization proceeding and in taking the oath of allegiance and denied that she had ever belonged to any organization that taught or advocated the overthrow of existing government in this country. She denied that she was asked at the time of her naturalization whether or not she had been a member of a Communist organization and denied that she knew or had ever attended any closed Young Communist League or Communist meeting with the prosecution witnesses Virgil Stewart or Bernice Baldwin.

Appellant also testified on direct examination as follows with reference to the post-1946 period and with reference to her attitude at the time of the trial:

Q. In question 28 you were asked: "Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage"? And you answered "No." Was that a true answer to that question?

66 A. That was a true answer.

Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing anything. I believe in fighting for this country. I like this country. I never told anybody I didn't.

Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

A. Teach?

Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

A. No, I never did.

Q. Did you ever advocate that?

A. No.

Q. Did you ever say that we should?

A. No, I never did.

Q. To your knowledge, did you ever belong to any organization that taught or advocated anarchy or the overthrow of the existing government in this country?

A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

Q. Are you attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States?

A. That, I am.

When asked on cross-examination, "Are you now, or have you ever been, a member of the Communist Party of the United States?" she claimed her privilege under the Fifth Amendment and declined to answer. The court ruled that by taking the stand in her own defense appellant had waived her privilege and directed her to answer. Appellant then refused to answer the following questions, basing her refusal on the Fifth Amendment:

Q. Isn't it true that in 1947 you were a member of the McGraw Communist Club, District No. 7 of the Communist Party of the United States?

Q. Do you know what the Michigan School of Social Science is?

Q. Do you know Barry Cody?

67 Q. What year was the first time that you were a member of the same Communist Party Club as Barry Cody?

Q. Isn't it true that there was an executive board meeting of the McGraw Communist Club held at your house in 1948?

Q. Isn't it true that you have paid Communist Party dues in the McGraw Communist Club?

Q. Did you attend an affair of the Communist Party celebrating the birthday of William Z. Foster, national chairman of the Communist Party?

Q. Were you a student in the class at the Michigan School of Social Science, in Detroit, in 1948 and 1949?

Q. Did you attend a meeting of the Lenin Memorial sponsored by the Communist Party at any time?

Q. In 1948 did you hold Communist Party membership card No. 72066?

Q. Did you hold Communist Party membership card No. 72061 in 1949?

Q. You mean you never belonged to the Communist Party?

The court held that appellant in testifying as a witness in her own behalf waived the right to exercise her privilege under the Fifth Amendment and found her in contempt of court. Appellant contends that a party by taking the stand in his own behalf in a civil proceeding does not waive his Constitutional privilege against incrimination.

The denaturalization proceeding is a civil case. Although the Fifth Amendment in its express terms covers criminal prosecutions and not civil cases, the courts have extended the protection of the amendment to civil as well as criminal proceedings. The meaning of the privilege is not merely that a person charged with crime shall not be compelled to be a witness against himself in a criminal prosecution; but that a person shall not be compelled, when acting as a witness in an investigation, to give testimony tending to show that he himself has committed a crime. *Counselman* v. *Hitchcock*, 142 U. S. 547. Or, as stated in *McCarthy* v. *Arndstein*, 266 U. S. 34, 40, a bankruptcy case, the privilege "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it."

The privilege may be waived, however. In *Raffel* v.
68 *United States*, 271 U. S. 494, the Supreme Court held that a defendant in a criminal case who voluntarily testifies in his own behalf waives completely his privilege under the Fifth Amendment. As Mr. Justice Stone there stated, when the defendant takes the stand in his own behalf "within the limits of the appropriate rules he may be cross-examined as to the facts in issue. . . . He may be examined for the purpose of impeaching his credibility. . . . If, therefore, the questions asked of the defendant were logically relevant, and competent within the scope of the rules of cross-examination, they were proper questions, unless there is some reason of policy in the law of evidence which requires their exclusion."

The court pointed out that "The safeguards against self-incrimination are for the benefit of those who do not wish to become witnesses in their own behalf and not for those who do. There is a sound policy in requiring the accused who offers himself as a witness to do so without reservation as does any other witness."

This decision was followed in *Johnson* v. *United States*, 318 U. S. 189. The principal question there was whether it was error for the trial court, after granting the privilege against self-incrimination, to permit the prosecutor to comment upon the claim of privilege and to permit the jury to draw any inference therefrom. The Supreme Court in ruling upon this point held that, since the petitioner, who was on trial for willful attempt to defeat and evade income taxes, took the stand and in direct examination made statements in self-defense, he waived the privilege. On page 195 the court quotes Wigmore on Evidence, 3rd Ed. (1940), Section 2276 (2) to the effect that his "voluntary offer of testimony upon any fact is a waiver as to all other relevant facts, because of the necessary connection between them all." The District Court in the *Johnson* case, *supra*, had upheld the claim of privilege, but the Supreme Court indicated, 318 U. S. 196, that it would "not have been error for the court to deny petitioner's claim of privilege."

Two questions arise in this case; therefore: (1) Does the rule in *Raffel* v. *United States*, *supra*, and *Johnson* v. *United States*, *supra*, apply in civil proceedings? (2) Are the questions asked in cross-examination here and not answered by appellant relevant to her story told on direct examination? If the rule applies in civil cases, and if the questions asked were relevant, the judgment of

the District Court must be affirmed. It is not claimed that the testimony sought to be elicited is not relevant and our consideration of the record forces us to conclude that they are.

69 As to the question whether the same rule of waiver of the constitutional privilege applies in civil as in criminal cases, we are cited to no decision specifically in point. We do not consider the question as to whether appellant's merely taking the stand constitutes a waiver. Here she testified at length in her own defense and our conclusions are based upon that fact. Both parties concede that this is a criminal contempt committed in the presence of the court and punishable under Title 18 U. S. C., Section 401. (Cf. *Nye* v. *United States*, 313 U. S. 33). We think this circumstance is not important.

Appellant's position briefly stated is that the waiver of a constitutional right must not be presumed and that when she testified in her own defense as to the allegations of false representation alleged in the complaint she did not intend to waive the privilege of the Fifth Amendment. It is argued by intelligent counsel that her action does not clearly show an intent to waive the privilege and that under *Glasser* v. *United States*, 315 U. S. 60, 70, we are compelled to indulge every reasonable presumption against the waiver of a fundamental constitutional right. But if appellant's contention is correct, the right of cross-examination, which is called the most efficacious test devised by the law for the discovery of truth, will be cut off in this case after appellant on direct examination has told her story in detail. Cross-examination is "the great and permanent contribution of the Anglo-American system of law to improved methods of trial procedure". Wigmore on Evidence, Vol. 5, 3rd Ed., Section 1367. The fact that appellant demands that the cross-examination of her story be cut off is all the more pertinent because the right of cross-examination has its root in the Federal Constitution. The essential purpose of confrontation is cross-examination. As Mr. Chief Justice Rugg, speaking for the Supreme Judicial Court of Massachusetts, in *Commonwealth of Massachusetts* v. *Gallo*, 175 N. E. 718, pointed out, "One main purpose of the rules of the common law as to the production of testimony in criminal cases is that its credibility shall be tested by cross-examination." See also 58 Am. Jur. 340. In *Snyder* v. *Massachusetts*, 291 U. S. 97, opinion by Mr. Justice Cardozo, it is declared that "the privilege to confront one's accusers and cross-examine them face to face is assured to a defendant by the Sixth Amendment in prosecutions in the federal

courts. . . ." Under the Sixth Amendment the right of an accused to be confronted by the witnesses against him imports the constitutional privilege to cross-examine the opposing wit-
70 ness. *State of Maine* v. *Crooker*, 123 Me., 310, 33 A. L. R. 821. See also 14 Am. Jur. 889, Note 18 and numerous cases cited. Cf. *Dowdell* v. *United States*, 221 U. S. 325, in which Mr. Justice Day points out that the provision of the Philippine statute which was substantially taken from the Bill of Rights of the Federal Constitution, was to give the accused "an opportunity of cross-examination" and "particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination."

The right of cross-examination thus held to be inherent in the constitutional right of confrontation belongs to the state, as well as to the accused. *Powers* v. *United States*, 223 U. S. 303. In that case the accused voluntarily took the stand and testified in his own behalf. The court held, p. 314, that he was properly "subjected to a cross-examination concerning his statement. 'Assuming the position of a witness, he is entitled to all its rights and protection and is subject to all its criticisms and burdens' and may be fully cross-examined as to the testimony voluntarily given." *Reagan* v. *United States*, 157 U. S. 301, 305. The witness under such circumstances "is not permitted to stop, but must go on and make a full disclosure." *Brown* v. *Walker*, 161 U. S. 591, 597. *Tomlinson* v. *United States*, 93 Fed. (2d) 652 (C. A. D. C.), certiorari denied 303 U. S. 642. Moreover, these decisions are not limited to instances where the accused admits a criminal act. He may, as this appellant has done, deny any criminal act, but his denial if given on the stand in his own defense is subject to cross-examination.

The cross-examination of a witness is a matter of right. *Fahey* v. *Clark*, 125 Conn. 44; *Babirecki* v. *Virgil*, 127 Atl. 594; *Alford* v. *United States*, 282 U. S. 687, 691. We conclude that the rationale of the rule as to waiver of the privilege by an accused who voluntarily offers himself as a witness in his own behalf and testifies in chief applies in civil cases. The appellant here may not prevent or defeat cross-examination by claiming protection against compulsory self incrimination under the constitutional provision. Since cross-examination is a basic right rooted in the Constitution of the United States it should not be eliminated except by the highest authoritative, legislative, or judicial expression.

In the *Raffel* case, *supra*, and *Johnson* v. *United States*, *supra*, no subtleties were indulged in as to what the defendant intended

to do in the way of waiving the privilege. It was held that a de-
fendant in a criminal case who voluntarily testifies in his
71 own behalf completely waives his privilege. This appellant
voluntarily testified in her own behalf. There is neither logic nor justice in the contention that she has the benefit of the Fifth Amendment but none of its burdens. When appellant voluntarily offered in her own behalf on direct examination facts material to the issues in the denaturalization proceedings and facts with reference to the period subsequent to 1946, she was compelled to do so "without reservation, as does any other witness." *Raffel v. United States*, *supra*. The waiver is not partial. Having cast aside the cloak of immunity, the party may not resume it at will.

The instant case involves the question of appellant's connection with the Communist Party. But the question of self incrimination may arise in many other types of controversy. In a contract case evidence may be adduced tending to convict a party of perjury. Now and then evidence presented tends to convict a party of forgery. In tax cases the record often tends to convict a defendant in a civil case of violation of criminal law. To hold that a defendant, under the claim of protection against self incrimination, may tell his full, self-serving story without any test of its truth by cross-examination is to make a mockery of the judicial proceeding.

We conclude that the rule of waiver applicable in criminal cases under *Raffel v. United States*, *supra*, is applicable here and required appellant to answer the questions propounded. Any other conclusion would have wide repercussions in many cases involving other situations than that here presented. If in civil cases which involve features of criminality witnesses and parties connected with such possible charges were excused from cross-examination, the opportunity of exposing fallacy, misstatement, or bias would be seriously curtailed. The statement of Judge Learned Hand in *United States v. St. Pierre*, 132 Fed. (2d) 837 (C. A. 2), although made in a criminal case, is squarely applicable. He said:

> "The law in this country . . . rests upon the obvious injustice of allowing a witness, who need not have spoken at all, to decide how far he will disclose what he has chosen to tell in part, and how far he will refuse to let his veracity be tested by cross questioning. In adversary cases it is hard to see how a trial could go on, if this were allowed."

The judgment of the District Court is affirmed.

[Petition for rehearing covering 9 pages filed omitted from this print. It was denied, and nothing more by order.]

72 In United States Court of Appeals

The Petition for Rehearing is denied.

Order denying rehearing

Filed June 12, 1956

73 [Clerk's Certificate to foregoing transcript omitted in printing.]

74 Supreme Court of the United States

No. 125 Misc., October Term, 1956

STEFENA BROWN, PETITIONER,

vs.

UNITED STATES OF AMERICA

Order granting certiorari

November 13, 1956

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 570 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

NOVEMBER 13, 1956.

U. S. GOVERNMENT PRINTING OFFICE 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 43

STEFENA BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

GEO. W. CROCKETT, JR.,
3220 Cadillac Tower,
Detroit, Michigan,

INDEX

Subject Index

Brief for Petitioner:

	Page
Opinion Below	1
Jurisdiction	1
Statute and Rules Involved	2
Questions Presented	2
Statement of the Case	3
Summary of Argument	9
Argument	10
I. There Was No Waiver By Petitioner of Her Privilege against Self-Incrimination	10
II. In A Summary Contempt Proceeding, Is The Court Of Appeals Permitted To Re Write the Trial Court's Certificate And Affirm Petitioner's Conviction Upon A Charge Not Made By The Trial Court?	19
Conclusion	22

Table of Cases Cited

Aiuppa v. *United States*, 201 F. (2nd) 287	19
Alexander v. *United States*, 181 F. (2nd) 480	16
Arndstein v. *McCarthy*, 254 U.S. 71	9, 11, 13, 20
Bart v. *United States*, 349 U.S. 219	13
Bermudez v. *Castillo*, 64 Phil. 483	11
Bilokumsky v. *Todd*, 263 U.S. 149	18
Blau v. *United States*, 180 F. (2nd) 403 rev. in 340 U.S. 159	12
Blau v. *United States*, 340 U.S. 332	14
Bridges v. *United States*, 199 F. (2nd) 845	19
Cole v. *Arkansas*, 333 U.S. 196	21
Cooke v. *United States*, 267 U.S. 517	22
Costello v. *United States*, 222 F. (2nd) 656	16
Counselman v. *Hitchcock*, 142 U.S. 547	12
DeJonge v. *Oregon*, 229 U.S. 333	21

	Page
Dennis v. *United States*, 341 U.S. 494	4
Emspak v. *United States*, 349 U.S. 190	20
Enrichi v. *United States*, 212 F. (2nd) 702	18
Hoffman v. *United States*, 341 U.S. 479	12, 18
Johnson v. *United States*, 318 U.S. 189	17, 20
Luria v. *United States*, 231 U.S. 9	10
McCarthy v. *Arndstein*, 262 U.S. 355	11, 13
Oliver, In re, 333 U.S. 257	22
Powers v. *United States*, 223 U.S. 303	17
Quinn v. *United States*, 349 U.S. 155	10, 17, 20
Raffel v. *United States*, 271 U.S. 494	17
Roberts v. *United States*, 151 F. (2nd) 664	21
Rogers v. *United States*	13, 17
Smith v. *United States*, 337 U.S. 137	15, 20
State, ex rel. Doran v. *Doran*, 215 La. 151	11
United States v. *Coffey*, 198 F. (2nd) 438	18
United States v. *Hoag*, 142 F. Supp. 667	11, 16
United States v. *Nelson*, 103 F. Supp. 213	13

STATUTES AND RULES

Immigration and Nationality Act of 1952, 66 Stat. 260; 8 U.S.C.A. 1451(a)	3
Nationality Act, 1940, 8 U.S.C. 738(e)	19

MISCELLANEOUS

American Jurisprudence, Vol. 38, "Witnesses", Sec. 54	17
A. L. R. (2nd), Vol. 19, p. 393	15
Griswold, "The Fifth Amendment Today"	15, 18

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 570

STEFENA BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

BRIEF FOR PETITIONER ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Opinion Below

The opinion of the Court of Appeals (Tr. 41) is reported at 234 F(2d) 140. The opinion of the District Court appears in the Transcript at page 38.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. section 1254. The Petition for the Writ of Certiorari was granted on November 13, 1956.

Statutes and Rules Involved

Title 18, United States Code, Section 401:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehaviour of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehaviour of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Rule 42 of the Federal Rules of Criminal Procedure:

"Rule 42. Criminal Contempt.

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record."

Questions Presented

(1) Upon the facts presented by the record here, can it be said that the prior testimony voluntarily given by Petitioner constituted a waiver of her privilege against self-incrimination?

(2) In a summary criminal contempt proceeding, is the Court of Appeals permitted to rewrite the Trial Court's certificate and affirm Petitioner's conviction upon a charge not made by the Trial Court?

Statement of the Case

On April 24, 1953 the United States filed its Complaint for cancellation of Petitioner's citizenship pursuant to Section 340(a) of the Immigration and Nationality Act of 1952 (66 Stat. 260; 8 U.S.C.A. 1451(a)).[1] (Tr. 1-6)

The Complaint alleged that Petitioner was a native of Poland prior to her naturalization by the United States District Court at Detroit, Michigan on November 26, 1946; that in the course of her naturalization process she had stated under oath that she had not been, for the period of at least ten years immediately preceding that date, a member of or affiliated with any organization teaching disbelief in or opposition to organized government; that she had never been a member of the Communist Party; and that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that the representations so made were false and that Petitioner knew they were false in that she had been a member of the Communist Party of the United States and the Young Communist League from 1933 to at least February, 1937. It charged that these organizations during that period advised and taught the overthrow by force and violence of the government of the United States.

Petitioner's Answer (Tr. 10) admitted her naturalization as alleged in the Complaint but denied that she had been guilty of any concealment or misrepresentation in the course of her naturalization.

At the trial of the cause the petitioner was called by the Government as a witness under Rule 43(b) of the Federal Rules of Civil Procedure. She answered all questions put

---

[1] The statute authorizes the District Courts to cancel certificates of naturalization obtained by concealment of a material fact or wilful misrepresentation.

to her that were limited in time to the period prior to her naturalization in 1946 (Tr. 11-19). Questions which related to Communists or Communist activity and which were unlimited in time or were addressed to the period subsequent to 1946, were refused (Tr. 17). Her refusal in each instance was expressly based upon her privilege under the Fifth Amendment to the Federal Constitution and was sustained by the Trial Judge (Tr. 16-18).

Among other things, petitioner, upon her examination under the Rule, testified that she was never a member of the Communist Party at any time prior to her naturalization in November, 1946 (Tr. 11); that she did not know the prospective prosecution witnesses, Barry Cody, Virgil Stewart or Bereniece Baldwin prior to 1946; but that she did know William Nowell and Earl Reno prior to that date (Tr. 12-13). She was asked about membership in the Communist Party after her naturalization in 1946, attendance at various Communist meetings, and when did she first meet Carl Winter (defendant in *Dennis, et al* v. *U. S.*, 341 U.S. 494). Her claim of the Fifth Amendment privilege was sustained as to each of these inquiries (Tr. 16-19).

At the conclusion of her examination by the District Attorney, defense counsel declined to examine and stated that he intended to call the petitioner as a witness for the defense. (Tr. 19) [2] Accordingly, on the following day, and after the Government had rested its case, defense counsel called the Petitioner to the witness stand (Tr. 19).

On direct examination by her counsel, petitioner's testimony concerning Communist activity continued to be confined to the pre-1946 period. She testified concerning her membership and activities in the Young Communist League from 1930 until January of 1935 (Tr. 21-22); and that from the time she left the Young Communist League until the

[2] Present counsel was retained by Petitioner in the appellate proceedings.

time of her naturalization in 1946 she did not "engage in any Communist Party or Young Communist Party activity." (Tr. 22). She stated also that her leaving the Young Communist League coincided with the expulsion of her husband from the Communist Party in January, 1935 (Tr. 23).

She reaffirmed that she had answered all questions truthfully at the time of her registration in 1940 as an alien under the Alien Registration Act (Tr. 24); and she specifically reaffirmed the truthfulness of the answers concerning loyalty given in her naturalization proceeding and in the taking of her oath of allegiance (Tr. 24-27).

Some of Petitioner's reaffirmances of the truthfulness of answers given in her naturalization papers, are in language of present affirmance as well as re-affirmance of her past statements of loyalty. The Court of Appeals (Tr. 43, 46) attached especial significance to these questions and answers as evidencing a waiver by Petitioner of her Fifth Amendment privilege.[3]

---

[3] "Q. In Question 28 you were asked: 'Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage?' And you answered 'No.' Was that a true answer to that question?

A. That was a true answer.

Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing anything. I believe in fighting for this country. I like this country. I never told anybody I didn't.

Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

A. Teach?

Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

A. No, I never did.

Q. Did you ever advocate that?

A. No.

Q. Did you ever say that we should?

A. No, I never did.

Q. To your knowledge, did you ever belong to any organization that

The first question put to petitioner on cross-examination by the District Attorney was: "Are you now or have you ever been a member of the Communist Party of the United States?" Petitioner claimed her privilege under the Fifth Amendment and declined to answer. (Tr. 32)

The Court, after hearing argument, held that, by taking the stand, Petitioner had waived her Fifth Amendment privilege (Tr. 33). She was directed to answer. When she adhere to her stated position, the Court cited her for contempt and announced that punishment would be imposed later (Tr. 33-34).

There followed additional citations of contempt predicated upon Petitioner's refusal, after direction, to answer the following questions (Tr. 34-38). In each instance the refusal was based upon the Fifth Amendment:

(1) Q. Isn't it true that in 1947 you were a member of the McGraw Communist Club, District No. 7 of the Communist Party of the United States? (Tr. 34)

(2) Q. Do you know what the Michigan School of Social Science is? (Tr. 34-35) [4]

---

taught or advocated anarchy or the overthrow of the existing government in this country?

A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

Q. Are attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States?

A. That, I am."

[4] As to this question, it should be observed that the petitioner had answered. The identical question had been put to her on her prior examination by the District Attorney and she answered "No" (Tr. 18). She also was then asked: "Isn't it true that the Michigan School of Social Science is a school conducted and run by the Communist Party of the United States?" Her reliance upon the Fifth Amendment was sustained by the Court as to this and all other questions about this school.

(3) Q. Do you know Barry Cody? (Tr. 35)

(4) Q. What year was the first time that you were a member of the same Communist Party Club as Barry Cody? (Tr. 35)

(5) Q. Isn't it true that there was an executive board meeting of the McGraw Communist Club held at your home in 1948? (Tr. 35)

(6) Q. Isn't it true that you have paid Communist Party dues in the McGraw Communist Club? (Tr. 35)

(7) Q. Did you attend an affair of the Communist Party celebrating the birthday of William Z. Foster, National Chairman of the Communist Party?)[6]

(8) Q. Were you a student in the class at the Michigan School of Social Science in Detroit in 1948, 1949? (Tr. 36)

(9) Q. Did you attend a meeting of the Lenin Memorial sponsored by the Communist Party at any time? (Tr. 37)

(10) Q. In 1948, did you hold Communist Party membership card No. 72066? (Tr. 37)

(11) Q. Did you hold Communist Party membership card No. 72061 in 1949? (Tr. 37)

(12) Q. You mean you never belonged to the Communis Party? (Tr. 38)

At the conclusion of the trial, a judgment was entered cancelling Petitioner's Certificate of Naturalization. No appeal was taken from this judgment.

---

[5] Here, again, the witness had previously testified on examination by the District Attorney that she did not know Barry Cody before 1946. (Tr. 12)

[6] The District Attorney indicated that this question was intended to cover "any time that it was celebrated." Petitioner answered "no." The District Attorney then asked "What about February 24, 1951 at the Jewish Cultural Center, 2705 Joy Road, Detroit Michigan?" Petitioner's refusal to answer was predicated upon the Fifth Amendment. (Tr. 36).

Also, at the conclusion of the trial, the Court rendered an oral opinion (Tr. 38) and concluded as follows (Tr. 40):

> "The Court is of the opinion that the defendant, *in taking the stand as a witness in her own behalf*, waived the right to exercise her privilege not to answer questions which might tend to incriminate her, by reason of the Fifth Amendment. And, having refused to answer a number of questions asked of her by the District Attorney, and having been directed by the Court to answer the questions, and having refused to answer the questions, the Court finds the defendant is in contempt of this Court.
>
> Of course, this is a contempt that occurred in the presence of the Court.
>
> Having found the defendant in contempt of court, the Court, therefore, shall impose punishment for such contempt.
>
> It is the sentence of this Court that the defendant be committed to the custody of the Attorney General of the United States for a period of six months, for this contempt of court." (Emphasis ours)

Also at the time of the initial citation for contempt, the Trial Court made it clear that its finding of a waiver by reason of Petitioner's taking the witness stand, was based upon the view "that the same rule applies in a civil suit as it does in a criminal case, and even for perhaps a stronger reason." (Tr. 34)

The Opinion Below

The Court of Appeals said (Tr. 46):

> ". . . We do not consider the question as to whether appellant's merely taking the stand constitutes a wai-

ver. Here she testified at length in her own defense and our conclusions are based upon that fact. . . ."

After discussing the importance and the Constitutional foundation of the right of cross-examination (Tr. 46-47), the Court below held:

". . . We conclude that the rationale of the rule as to waiver of the privilege by the accused who voluntarily offers himself as a witness in his own behalf and testifies in chief applies in civil cases. The appellant here may not defeat cross-examination by claiming protection against compulsory self-incrimination under the constitutional provision. Since cross-examination is a basic right rooted in the Constitution of the United States, it should not be eliminated except by the highest authoritative, legislative, or judicial expression.

. . . When appellant voluntarily offered in her own behalf on direct examination facts material to the issues in the denaturalization proceedings and facts with reference to the period subsequent to 1946, she was compelled to do so 'without reservation, as does any other witness.'. *Raffel v. United States*," (271 U.S. 494).

Summary of Argument

I. At least since the decision of this Court in *Arndstein v. McCarthy*, 254 U.S. 71 (1920), it has been the rule, consistently followed in the Federal Courts, that a party-witness in a civil proceeding does not waive his privilege against self-incrimination unless and until he makes "an admission of guilt or furnish(es) clear proof of crime." Nowhere in the testimony of Petitioner here is there a single admission of guilt or proof of any crime. Neither

the Court of Appeals nor the Trial Court points to any such admission.

II. The Court of Appeals neither affirms nor rejects the Trial Court's finding in its certificate (supra, p. 8) that Petitioner's waiver occurred "in taking the stand as a witness in her own behalf;" instead, the Court of Appeals appears to predicate its finding of a waiver upon the fact that Petitioner voluntarily gave testimony pertinent to the issue. Since this is a summary criminal contempt, Rule 42 of the Federal Rules of Criminal Procedure required that the facts constituting the contemptuous conduct be certified by the Trial Judge. The certificate, thus made, is at once the charge and the judgment.

The necessary effect of the Court of Appeals ruling is to re-write the certificate of the Trial Court so as to find a different basis for guilt than that found by the Trial Court. Not only is Petitioner thus denied an opportunity to make an informed choice and to recede from his initial refusal and answer the questions" or adhere to her previous position and risk the penalty (Cf. *Quinn* v. *United States*, 349 U.S. 155 at 165-166), but her conviction constitutes a conviction upon a charge not made nor found by the Trial Court.

ARGUMENT

I

There Was No Waiver by Petitioner of Her Privilege Against Self-Incrimination

A suit to cancel a certificate of citizenship is a civil proceeding, *Luria* v. *United States*, 231 U.S. 9, 27-28; 34 S.Ct. 10. The defendant who voluntarily testifies in such a proceeding has the same status with respect to the privilege against self-incrimination that any other non-defendant witness enjoys in either a civil or criminal case.

Thus, Dean Wigmore says:

> "For a party defendant in a civil case having a criminal fact as its main issue, the question arises whether his situation is to be assimilated to that of the ordinary witness or to the accused in a criminal case. None of the reasons applicable to the latter case . . . have force here." (Wigmore, Evidence, 3rd ed. Vol. 8, Sec. 2268.)

See also *Bernaudez v. Castillo*, 64 Phil. 483 (1937) and *State ex rel. Doran*, Doran, 245 La. 151 (1949), cited by the author.

Our inquiry thus becomes one of ascertaining the rule applicable in the Federal Courts to ordinary witnesses. The rule is deduced from two decisions of this Court, each of which grew out of a bankruptcy proceeding involving one Arndstein. *Arndstein v. McCarthy*, 254 U.S. 71, 41 S.Ct. 26, and *McCarthy v. Arndstein*, 262 U.S. 355, 43 S. Ct. 562. Both cases were recently reviewed and applied in a scholarly opinion by District Judge Pine in *United States v. Hoag*, 142 F.Supp. 667 (D.C. 1956).[7] We quote

[7] Defendant Hoag was prosecuted under 2 U.S.C.A. 192 for refusal to testify before a Congressional Committee—the "McCarthy Committee." Defendant had refused to answer some twenty-nine questions, specifically invoking the Fifth Amendment. Among others, she was asked:

> "If the Communist Party ordered you to sabotage the work you are doing, assuming that we were at war with Communist Russia, would you obey those orders or would you refuse to obey them?"

Defendant replied as follows:

> "I have never engaged in espionage nor sabotage. I am not so engaged. I will not so engage in the future. I am not a spy or saboteur. . . ."

The Government contended that by this undertaking to answer, defendant had waived her right under the Fifth Amendment to refuse to answer subsequent questions concerning whether she had given information about her work to Communist Party members; had discussed classified Government work at Communist meetings; or had engaged in espionage for the Communist Party seven and one-half years before.

Judge Pine's conclusion (p. 671):

> "The rule of law, therefore, as announced by these cases, is that the voluntary answer must be 'criminating' to prevent the witness from stopping short and refusing further explanation. The defendant in this case did not testify as to any criminating facts; on the contrary her testimony relied on by the Government as requiring her to answer the questions herein involved were completely non incriminating in character and, under the authorities above mentioned, she had the right to 'stop short' and assert her privilege."

The rule thus set forth in the *Arndstein* cases has been consistently applied by this Court.

In *Counselman* v. *Hitchcock*, 142 U.S. 547, the witness testified that he was in the grain business and received shipments over particular interstate railroads. It was relevant to inquire, therefore, if he had received rates on shipments from outside the state less than the tariff or open rate. Notwithstanding the relevancy of the question, the claim of the privilege was sustained.

In *Hoffman* v. *United States*, 341 U.S. 479 (1951), 71 S. Ct. 814, where the defendant had admitted knowing Weisberg, the subsequent question as to whether he had seen Weisberg "this week" was clearly pertinent and relevant. Nevertheless, the Court held that his answer to the first question did not deprive him of his privilege as to the second.

Similarly, in *Patricia Blau* v. *United States*, 180 F.(2d) 103, rev. in 340 U.S. 159 (150), 71 S.Ct. 223, the defendant answered in the negative the question whether she possessed Communist Party records. Subsequent questions designed to ascertain from her the location of the records were thus pertinent. Nevertheless, her claim of the privilege as to these subsequent questions was upheld by this Court.

In *Bart* v. *United States*, 349 U.S. 219 (1955) the defendant admitted that he had been "organizer and head of the Communist Party" (at p. 224). His right to rely upon his privilege, however, was sustained by this Court with respect to divulging the names of "other officials of . . . the Communist Party." (224-225)

Again, in *United States* v. *Nelson*, 103 F. Supp. 213, the defendant's affirmative answer to the question whether or not he was a member of the Communist Party, made pertinent and relevant the subsequent questions, intended to show the nature and extent of his Party associations and activities. But his claim of the privilege as to these subsequent questions was sustained by the Court.

The foregoing cases reflect the rule consistently applied by this Court to ordinary witnesses and parties alike in civil proceedings. In none of these was there a previous "admission of guilt" or "proof of crime." Thus, under the Federal rule each of these witnesses was permitted to claim the privilege; there had been no waiver.

This rule, reiterated by this Court in its second *Rudstein* opinion at 262 U.S. 355, is well known to the Government. Indeed, in its brief in this Court in *Rogers et al* v. *United States*, 340 U.S. 367 (1951), 71 S. Ct. 438, the Government conceded that, as applied to ordinary witnesses, the rule with respect to waiver by prior testimony was not dependent upon considerations of relevancy of cross-examination; but rather, upon whether or not the witness' prior testimony was incriminating. Thus, the Government there said in its brief (pp. 25-26):

> "Where the witness is not the defendant in a criminal prosecution, there is a substantial body of authority that testimony as to a transaction waives the privilege with respect to all other inquiries pertinent to that transaction. This Court, however, has indicated that

the privilege is not waived merely by testimony as to a transaction and that before the witness can be held to have waived there must be an element of incrimination in what he has disclosed."

This Court, in its opinion in *Rogers*, reaffirmed this rule and referred to its *Arndstein* opinions reported in 254 U.S. 71 and 262 U.S. 355.

In *Rogers* this Court said (at p. 372):

> "In Blau v. United States, 1950, 340 U.S. 159, 71 S.Ct. 223, we held that questions as to connections with the Communist Party are subject to the privilege against self-incrimination as calling for disclosure of facts tending to criminate under the Smith Act, 18 U.S.C.A. § 2386. But petitioner's conviction stands on an entirely different footing, for *she had freely described her membership, activities and office in the Party.* Since the privilege against self-incrimination presupposes a real danger of legal detriment arising from the disclosure, petitioner cannot invoke the privilege where response to the specific question in issue here would not further incriminate her. Disclosure of a fact waives the privilege as to details. As this Court stated in Brown v. Walker, 1896, 161 U.S. 591, 597, 16 S.Ct. 644, 647, 40 L.Ed. 819:
>
> > "Thus, if the witness himself elects to waive his privilege, as he may doubtless do, since the privilege is for his protection and not for that of other parties, and discloses his criminal connections, he is not permitted to stop, but must go on and make a full disclosure.' " (Emphasis ours)*

*Rogers, when thus read in conjunction with the two *Blau* cases (340 U.S. 159 and 340 U.S. 332), stands for the proposition that mere admission of *membership* alone "does not constitute a waiver of the privilege so as to require the answering of further questions relating to the witness'

See also *Smith* v. *United States*, 337 U.S. 137, 149; 69 S.Ct. 1000, where this Court refused to find a waiver based upon prior testimony voluntarily given in a civil proceeding. The testimony was given under conditions where it was clear that the witness intended to claim his privilege and the statement relied on by the Government to show a waiver contained no incriminating facts nor admission of guilt.

Applying this rule in the foregoing cases to the facts in the instant case, it would appear that the Court of Appeals, by its judgment here, has determined that in a civil proceeding a negation by a witness of anything incriminating and an affirmance of her innocence is itself a waiver of the privilege. For the gravamen of the opinion of the Court below is its statement that

> "... When appellant voluntarily offered in her own behalf on direct examination facts material to the issues in the denaturalization proceedings and facts with reference to the period subsequent to 1946, she was compelled to do so without reservation, as does any other witness." (*Raffel* v. *United States*, supra)

The test, however, is not whether the witness has offered material evidence; rather, as this Court stated in the *Arnstein* opinions, supra, the test is whether the witness has made an "actual admission of guilt or incriminating facts."

Nowhere in petitioner's direct testimony is there a single admission of guilt or an incriminating fact. She admitted membership in the Young Communist League prior to 1935; she admitted knowing certain prosecution witnesses prior to 1946; and she denied membership in the Communist

---

activities in connection with it." 19 A.L.R. (2d) at p. 393, note 14. A fortiori, a denial of membership and affirmance of loyalty does not constitute a waiver. See Dean Griswold's discussion of *Rogers*, Griswold *"The Fifth Amendment Today,"* 22-24.

Party at any time prior to 1946. Certainly, there is nothing in any of these answers which would tend to incriminate her under any law in effect at the time.

If we assume (as the Trial Court must have) that the basis for the fear of self-incrimination here is rooted in the prosecutions under the Smith Act and the Attorney General's highly publicized threat of additional conspiracy prosecutions of alleged Communists (referred to by Circuit Judge Denman in *Alexander* v. *United States*, 181 F(2d) 480 (C.A. 9th)), then it is certainly understandable that one may be willing to testify and admit Communist associations in the pre-1946 period (especially when such associations ceased in 1935), and yet have a justifiable fear of prosecution should she answer similar inquiries with respect to the post-1946 period. Any prosecution for Communist activity in the pre-1946 period was outlawed by the applicable statute of limitations. (Cf. *Costello* v. *United States*, 222 F(2d) 656 (C.A. 2); and there could be no reasonable basis for a fear of self-incrimination based upon such testimony. In any event, prosecution for such activity in the pre-1935 period is hardly authorized under a Smith Act adopted in 1940.

When examination is made of the post-1946 testimony quoted by the Court of Appeals to show a waiver (supra, note, p. 6), it is evident that such testimony contains no admission of guilt or proof of crime. Thus, Petitioner testified that she was not a believer in anarchy or sabotage at the time of her 1946 naturalization and *that she is not so now*. (Cf. *United States* v. *Hoag*, supra, note, p. 11). She further testified that she *never* taught or advocated nor belonged to any organization that taught or advocated anarchy or the overthrow of existing government in this country; that she *is* attached to the principles of the Constitution of the United States; and that she *is* willing to take up arms in

defense of this country. Finally she testified that she *never* attended any Communist meetings with Virgil Stewart or Berenicce Baldwin.

This is the total of the "admissions" made by Petitioner. Nowhere is there here an admission of criminal conduct; rather, there is here a denial of unlawful conduct and a protestation of loyalty. A denial is never a waiver. 58 *Am. Jur.* "*Witnesses*," *Sec. 54.*

The error made by the Court of Appeals is that it equates the evidence question of relevancy of cross-examination with the constitutional question of waiver of the privilege against self-incrimination. The Court of Appeals bottoms its holding upon the decision of this Court in the criminal case of *Raffel* v. *United States*, 271 U.S. 494. But the *Raffel* case, as well as *Johnson* v. *United States*, 318 U.S. 189, *Powers* v. *United States*, 223 U.S. 303, and the other criminal cases cited by the Court below in its opinion, were familiar to this Court at the time of its opinions in the *Hoffman*, *Blau*, *Smith*, *Rogers*, and *Quinn* cases (supra); indeed, both *Raffel* and *Johnson* are cited in Smith (note 10) and the *Powers* case is cited by this Court in *Rogers* (footnote 13). But each of these cases is cited for the proposition that the privilege can be waived and that *in a criminal case* a defendant who voluntarily takes the stand on the issue of his guilt or innocense waives his right to rely upon the privilege with respect to any questions pertinent and relevant to the issue of his guilt of the offense for which he is being tried. This Court has never equated this rule, applicable to the accused who voluntarily takes the stand, with the rule of the *Arndstein* cases which applies to all other witnesses in civil and criminal cases alike.

There are cogent reasons for this differentiation between the accused and all other witnesses; chief among them being that the accused may not be called as a witness against his

will; he need not claim his privilege; and no inferences can be drawn from his failure to testify. His rights in these respects are automatically protected by the literal language of the Fifth Amendment since he is already "a person" in a criminal case." But as to all other witnesses, the Amendment confers no automatic protection. They may be compelled to take the stand and testify; they must claim the privilege under oath and with respect to a specific inquiry (*Enrichi* v. *United States*, 212 F(2d) 702 (C.A. 10, 1954)); the claim must be made in a context showing a likely probability that an answer by him might be incriminating (*Hoffman* v. *United States*, supra; see also *United States* v. *Coffey*, 198 F(2d) 438 (C.A. 3rd, 1952)); and, finally, unfavorable inferences may be drawn from his silence where there is a duty to speak and "tendency to incriminate" is not evident. (*Bilokumsky* v. *Tod*, 263 U.S. 149, 154).

The Court of Appeals justifies its adoption to this civil proceeding of the rule applicable to the accused in a criminal case, by calling attention to the possibility that otherwise evidence "tending to convict a party of perjury" in a contract case, or to convict a defendant in a civil tax case of violation of criminal law, might never be uncovered. (Tr. 48). But this is precisely the choice which the framers of the Fifth Amendment elected to make.[9] They believed that society was better served by letting an occasional guilty party go unpunished than by endeavoring to compel his admission of guilt.

Indeed, the application here of the rule applicable to an accused would be contrary to the policy of the law and would adversely affect the administration of justice.

In the absence of constitutional or statutory restrictions as to competency and privileged communications, the policy of the law requires that every inducement be afforded for

---

[9] See *Griswold, "The Fifth Amendment Today,"* 6-8.

full disclosure of the facts upon which the judicial process is to operate. Any rule that would conclusively infer a waiver of constitutional rights from the mere taking of the stand by a party in a civil proceeding necessarily serves to inhibit such full disclosure.

And this is especially true in a denaturalization proceeding where the defendant's failure to testify in his own behalf may result not so much in the loss of property, but in the loss of his citizenship. Thus, the defendant in such a case is placed at a disadvantage far more serious than that faced by a defendant even in a criminal case. In almost every instance the party in a denaturalization proceeding involving his beliefs or opinions or political views is the only one who can testify to the facts essential to his defense.[10] Thus, if he does not take the stand he runs the risk of losing his valuable right of American citizenship by default. If he does take the stand, according to the ruling of the Trial Judge here, he loses his right under the Fifth Amendment to refrain from incriminating himself. Moreover, if he does incriminate himself he also may lose his citizenship.[11] (Concerning the unfairness of such a choice, see the opinion of the Sixth Circuit in *Aiuppa v. United States*, 201 F(2d) 287, 300.)

II

In a Summary Criminal Contempt Proceeding, Is the Court of Appeals Permitted to Rewrite the Trial Court's Certificate and Affirm Petitioner's Conviction Upon a Charge Not Made by the Trial Court?

This case was heard and determined in the Trial Court upon the sole issue of whether the Petitioner, by volun-

[10] See Griswold, op. cit., pp. 8-9.

[11] If he is convicted the convicting court is authorized to cancel his citizenship. (Sec. 738e Nationality Act, 1940, 8 U.S.C. 738e.) (*Bridges v. United States*, 199 F.(2d) 845).

tarily taking the stand as a witness in her own behalf, waived her privilege under the Fifth Amendment. The Court made it clear that it was applying the rule in criminal cases where the accused takes the stand; and it expressly grounded its adverse decision upon this and this alone (supra, p. 8). Hence, it must be assumed that the Trial Judge found nothing in Petitioner's direct testimony that constituted "an admission of guilt or furnish clear proof of crime;" and that, but for his view that "taking the stand" constituted a waiver, there would have been no charge and no conviction of contempt.

In thus applying to this case the rule applicable to the accused in a criminal case, the Trial Court inferred a wavier as a matter of law. For in a criminal case the accused who takes the stand will not be heard to say he did not intend a waiver; the waiver follows as a matter of law from his voluntarily offering himself as a witness. *Johnson* v. *United States*, 318 U.S. 189; 63 S. Ct. 549.

The *Arndstein* rule, on the other hand, is different in that the waiver is inferred as a matter of fact. The issue is the witness' intent and the rule holds that the trier of the facts is justified in inferring an intention to waive in those cases where the ordinary witness' testimony constitutes "an admission of guilt or furnishes clear proof of crime." The inference of waiver thus drawn from the witness' voluntary testimony is basically the same as the inference of waiver in any other field of law; the conduct or statement by a witness amounting to abandonment of the privilege must be plainly inconsistent with his assertion of the privilege. Cf. *Smith* v. *United States*, supra; *Quinn* v. *United States*, 349 U.S. 155, and *Emspak* v. *United States*, 349 U.S. 190. Indeed, the only difference between the factual inference to be drawn in cases such as the instant one and that in other situations, is that here we deal with a constitutional privilege and the intent to waive is not

lightly to be inferred. *Smith v. United States*, supra.

Here, then, is the basic distinction between the Trial Court's certificate and the Court of Appeals ruling: The Trial Court erroneously applied the rule applicable to an accused in a criminal case and, in so doing, it concluded *as a matter of law* that a waiver occurred regardless of the intention of Petitioner. It did not apply the *Arndstein* rule and, hence, it did not find *as a fact* that Petitioner's prior testimony evidenced an intention to waive the privilege. Yet, a proper finding of a waiver is a fact essential to the charge of refusal to testify.

The Court of Appeals, on the other hand, declined to affirm or reverse the Trial Court's erroneous conclusion of law, and proceeded to find *as a fact* that Petitioner's prior testimony did constitute a waiver. The finding is erroneous, as we have seen, because nowhere in Petitioner's prior testimony is there any admission of guilt or proof of crime.

Thus, the Court of Appeals has undertaken to make a factual finding, essential to sustain the charge against this Petitioner, when such a finding was not and could not properly have been made by the Trial Court.[12] The effect of this action by the Court of Appeals is to re-write the certificate of the Trial Court and change the charge which the Trial Court undertook to make in its certificate. Petitioner, therefore, now stands convicted upon a charge not made. The action of the Court of Appeals is thus at variance with the holdings of this Court in *Cole* v. *Arkansas*, 333 U.S. 196, and *DeJonge* v. *Oregon*, 229 U.S. 333, 362.

This action by the Court of Appeals would be serious enough where it related to a criminal conviction after trial. Here, however, we deal with a summary conviction for crime. Summary punishment for contempt is an exercise

[12] It is familiar law that the Courts of Appeals are not triers of the facts. *Roberts* v. *U.S.*, 151 F.(2d) 664 (C.A. 5th).

of exceptional and drastic judicial power and repeated decisions of this Court dictate that the power shall be severely limited and strictly construed. *Cooke v. United States*, 267 U.S. 517, 539; *In Re Oliver*, 333 U.S. 257, 275. This appears to be the reason for the requirement in Rule 42 of the Rules of Criminal Procedure that "The order of contempt shall recite the facts and shall be signed by the judge and entered of record." The action of the Court of Appeals is in clear violation of this rule.

Conclusion

Thus, we see that whether the theory relied on by the Trial Court is considered or that relied on by the Court of Appeals, the conclusion in either instance is erroneous. The judgment below should be reversed and Petitioner discharged.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN
& ROBB,
By GEO. W. CROCKETT, JR.,
Counsel for Petitioner,
3220 Cadillac Tower,
Detroit 26, Michigan.

Dated at Detroit, Michigan, this 1st day of February, 1957.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 43

STEFENA BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR PETITIONER

GEO. W. CROCKETT, JR.
3220 Cadillac Tower
Detroit, Michigan
Counsel for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 13

STEFENA BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR PETITIONER

In this Supplemental Memorandum we propose to discuss the following issue not covered in Petitioner's original Brief:

> Assuming that Petitioner's claim of self-incrimination was properly overruled by the Trial Court, did her refusal to answer constitute a "contempt" within the meaning of Title 18, U.S.C., Sec. 401?[1]

[1] This question was initially raised by Mr. Justice Frankfurter during the Government's presentation at the oral argument. It is further suggested by the Court's order of June 10, 1957 directing that this case and *United States v. Yates* (No. 15, Oct. 1956 Term) be reargued. A similar issue is presented in *Yates*.

The relevant portion of Title 18, U.S.C., Sec. 401 provides:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; • • • (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Ever since the decision of this Court in *Ex Parte Hudgings*, 249 U.S. 378, 383; 39 S.Ct. 337, 11 A.L.R. 333 (1949), it has been settled law in the Federal Courts that:

> "An obstruction to the performance of judicial duty resulting from an act done in the presence of the Court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element *must clearly be shown in every case* where the power to punish for contempt is exerted . . ."[2] (Emphasis ours)

This holding in *Hudgings* was reiterated by this Court in *In Re Michael*, 326 U.S. 224, 227; 66 S.Ct. 78 (1945) where, allegedly "false and evasive" testimony before a grand jury was held by the lower courts to be an obstruction punishable as a contempt. In reversing, this Court said:

> "Not very long ago we had occasion to point out that the Act of 1831, 4 Stat. 487, from which Sec. 268 of the

[2] In *Hudgings*, *supra*, the witness' claimed inability to positively identify certain handwritings was regarded by the trial court as false testimony. The witness was summarily adjudged guilty of a contempt in the presence of the Court and committed to jail until he should purge himself. He also was indicted for perjury. His release on bail under the indictment was inoperative because of the commitment for contempt. He petitioned for habeas corpus.

> Judicial Code derives, represented a deliberate Congressional purpose drastically to curtail the range of conduct which Courts could punish as contempt. *Nye v. United States*, 313 U.S. 33, 44-48, 61 S.Ct. 810, 813-816, 85 L.Ed. 1172. True, the Act of 1831 carries upon its face the purpose to leave the courts ample power to protect the administration of justice against immediate interruption of its business. But the references to that Act's history in the Nye case, supra, reveal a Congressional intent to safeguard constitutional procedures by limiting courts, as Congress is limited in contempt cases, to 'the least possible power adequate to the end proposed.' Anderson v. Dunn, 6 Wheat. 204, 231, 5 L.Ed. 242. The exercise by federal courts of any broader contempt power than this would permit too great inroads on the procedural safeguards of the Bill of Rights, since contempts are summary in their nature, and leave determination of guilt to a judge rather than a jury. It is in this Constitutional setting that we must resolve the issues here raised."

Thus, it is clear that the qualifying clause, "obstruct the administration of justice," which appears in the first part of Sec. 401 above, has been construed by this Court as a qualification upon the power of the Federal Courts to punish under the third clause of that Section as well. From this it follows that it is not every act of misbehavior or failure to obey a lawful order of a Federal Court which constitutes a contempt within the meaning of the second and

---

[3] Again, in *Offutt v. U.S.*, 348 U.S. 11, 75 S.Ct. 11, at p. 13, this Court reiterated that "the pith of this rather extraordinary power to punish without the formalities required by the Bill of Rights for the prosecution of Federal crimes generally, is that the necessities of the administration of justice requires such summary dealing with obstructions to it. It is a mode of vindicating the majesty of the law, in its active manifestation, against obstruction and outrage . . ."

third clauses of Section 401; but rather only such misbehavior or disobedience as is "clearly . . . shown" to have obstructed the Court in the administration of justice (*Ex Parte Hudgings, supra*).

Even if it is assumed, therefore, that the Trial Court here was correct in its ruling that Petitioner waived her Fifth Amendment privilege when she voluntarily took the witness stand (Tr. 33, 34, 40), the refusal of Petitioner to comply with the Court's order that she answer was not punishable as a contempt because the record here fails to show that her refusal obstructed the Court in any manner. Moreover, there is no finding of such an obstruction in the Trial Court's rulings nor in his certificate. Cf. *Fischer* v. *Pace*, 336 U.S. 155, 160.[1] If, as *Ex Parte Hudgings, supra*, clearly holds, the element of obstruction "is the characteristic upon which the power to punish for contempt must rest," then it follows that this essential ingredient of the offense of criminal contempt must be shown by the record here and must be found by the Trial Court.

On the contrary, an examination of each of the questions refused by Petitioner (see pp. 6-7 of Petitioner's Brief) shows that an answer by Petitioner was not necessary to the Government's proof; each of these questions already had been answered by one or another of the Government's witnesses and nowhere in the entire direct examination of Petitioner (Tr. 19-32) is there any denial of the testimony given by these witnesses with respect to these questions. Indeed, with respect to Questions 2, 3 and possibly 7, Petitioner already had answered while testifying as a witness under the Rule (see Petitioner's Brief, Notes 4, 5 and 6).

---

[1] In both the *Hudgings* and the *Michael* cases the trial court expressly found that conduct of the witness was an obstruction to the Court in the administration of justice.

Nor does the opinion of the Trial Court evidence any difficulty experienced by the Court in arriving at its conclusion to revoke Petitioner's citizenship. On the contrary it is readily apparent from the Court's opinion that all of Petitioner's testimony on direct examination was ignored by the Court, except insofar as her testimony was corroborated by the Government's witnesses (see Reprint of Full Opinion, pp. 5-6). (Cf. *United States* v. *Goldstein*, 158 F.2d 916, 921 (CADC, 1947), no obstruction where court not misled by false affidavit.)

Further, it is clear from the Petitioner's demeanor upon the stand and from the manner in which she invoked the Fifth Amendment privilege that her conduct was not contumacious; her refusal proceeded from a conscientious belief, based upon the advice of her trial counsel, that the Constitution protected her in such refusal. In response to the Court's direction that she answer, she replied (Tr. pp. 33-34):

> "I am sorry, your Honor, I just cannot answer that question. I am under the Fifth Amendment. I am sorry I have to do that."

Over and over again she repeated her regret that she could not concur with the Trial Court's ruling that the protection of the Fifth Amendment was not available to her (Tr. pp. 35-38).[1]

[1] Unlike the defendant in *U. S.* v. *Appel*, DC, 211 F. 495 (referred to in *In re Michael*, *supra*, at pp. 228-229), it cannot be argued that Petitioner's reasons for refusing to obey the Court's direction was "a transparent sham" and was not bona fide and sincere. Instead, what we have here is a situation analogous to that recently before this Court in *Konigsberg* v. *California*, 353 U.S. 252, 77 S.Ct. 722 at p. 732, where the Court observed that the refusal to answer on First Amendment grounds as to membership in the Communist Party "was not frivolous" but "was based on a belief that the United States Constitution prohibited the type of inquiries which the Committee was making."

It is true, of course, that every refusal to answer a proper question has some "obstructive" effect upon the Court in its function of ascertaining the truth. But such incidental obstruction as flows from an erroneous claim of a Constitutional privilege is not the kind to which Section 401 is addressed. Cf. *In Re Michael, supra*, at pp. 227-228. Faced with a refusal to answer, it becomes the duty of the Trial Court to ascertain if there is a reasonable basis asserted in good faith for such refusal to answer. The worst that can be said for Petitioner's refusal here (under our assumption that the Trial Court was correct) is that it was grounded upon a misconception of her legal rights in an area where, it must be admitted, the general law is not free from doubt.[6] The choice she faced was to accept the Trial Court's ruling and forego any opportunity to test the validity of that ruling or stand upon her claim and risk the penalty of contempt.[7] Her inexperience in such matters, her limited formal education, and her previous answers to some post-1946 questions put to her by Government counsel which were not regarded by the Trial Court as a waiver,[8] all combined to convince her of the legal merit

---

[6] See comment by Justice Black in *Rodgers v. U. S.*, 340 U.S. 367 at page 378: ". . . Moreover, today's holding creates this dilemma for witnesses: 'On the one hand, they risk imprisonment for contempt by asserting the privilege prematurely; on the other, they might lose the privilege if they answer a single question.' The Court's view makes the protection depend on timing so refined that lawyers, let alone laymen, will have difficulty in knowing when to claim it."

[7] The Trial Court apparently felt that the issue of waiver by taking the stand in a civil case was not free from doubt, for defense counsel was told: "I want to give you every right to have this question determined by an appellate court." (Reprint of Full Opinion, p. 12.)

[8] Such inquiries as "Do you know a Virgil Stewart?" "William Nowell," "Bernice Baldwin," "Earl Reno?" (Tr. p. 12); "Did you ever at any time pay Communist Party dues to Bernice Baldwin" (Tr. pp. 15, 16), were answered by Petitioner even though they were not in terms limited to the pre-1946 period.

of her counsel's advice. And that advice, in turn, was based upon this Court's repeated rulings in the *Bradstein* cases (254 U.S. 71, 41 S.Ct. 26; 262 U.S. 355, 43 S.Ct. 562).

If counsel was in error, certainly Petitioner should not be penalized with six months' imprisonment because she elected to obtain a ruling on that issue from this Court. Cf. *Watkins* v. *United States*, 354 U.S. ——, 77 S.Ct. 1173; and *Sweezy* v. *New Hampshire*, 354 U.S. ——, 77 S.Ct. 1203.

It is a tenable conclusion, we think, that both Petitioner and her trial counsel were actually misled by the Trial Court's ruling in the first instance (Tr. p. 33). Had the Trial Court made it clear that it was of the view that Petitioner's direct testimony, and not the mere act of taking the witness stand, was the basis for applying the waiver doctrine, both Petitioner and her trial counsel might have pursued a different course. For it might well be that while they were reasonably certain of the merits of their contention that taking the stand was not a waiver, they may not have felt as strongly with respect to the waiver effect of Petitioner's general denials made on her direct examination.

But having been emphatically told and retold by the Trial Judge of the precise ground for his ruling, and being of the conviction that the ruling was in violation of her constitutional right, Petitioner and her trial counsel were thus led to adhere to their initial position. Not until the appeal stage was reached was it even suggested that there had been a waiver by prior testimony.* At this point in the proceedings—and because they were misled by the Trial Court's ruling—it was too late for Petitioner and her trial counsel to make an informed choice and, perhaps, recede from the initial refusal to answer questions, thus avoiding the risk of an adverse ruling on appeal. Cf. *Quinn*

v. United States, 349 U.S. 155, 165; 75 S.Ct. 668. Under these circumstances, not only was there no obstruction, but the requisite criminal intent likewise is missing. Hence, Petitioner's refusal did not amount to a criminal contempt and there was no power in the Trial Court under Section 401 to summarily punish for contempt. See *Carlson v. United States*, 209 F.2d 209, 214 (C.A. 1st, 1954).

There is an additional reason why the Trial Court here lacked power to summarily punish for contempt. In *In re Michael*, *supra*, this Court observed (at p. 227) that the power of the Federal Courts to punish for contempt is limited to "the least possible power adequate to the end proposed." This, we interpret to mean, that if any other remedy, short of the exercise of the drastic power of summary contempt, is available to the Trial Court to remove any obstruction to the administration of justice, that remedy must be used.[10] Our inquiry, then, is what less drastic remedy was available to the Trial Court under the circumstances of this case? The answer is, the Court might have stricken all of the testimony offered by Petitioner on her direct examination. This is the procedure followed by several State courts where the action of the witness prevents proper cross-examination by the adverse party. Indeed, this procedure has been followed even where the claim of the privilege is upheld by the Court.

> "If a correct ruling by the Court sustaining the claim of privilege deprived a party of the right to an adequate cross-examination, the party is entitled to have stricken the pertinent matter given by the witness on direct examination." (*Am. Law Institute, Basic Problems of Evidence*, by Edmund M. Morgan, at page 152.

[10] At the oral argument Government Counsel agreed with Mr. Justice Brennan's comment regarding the severity of the six-month sentence imposed on Petitioner.

citing *McElhannon* v. *State*, 99 Ga. 672, 26 S.E. 501, 505 (1896); *State* v. *Perry*, 210 N.C. 796, 188 S.E. 639, 640 (1936); *Thomas* v. *Bowler*, 162 Wash. 54, 297 Pac. 1094, 1095 (1931).) See also 58 Am. Jur. "Witnesses," p. 56; and *United States* v. *Keown*, 19 F. Supp. 639, 646; and *Summit Drilling Corp.* v. *C.I.R.*, 160 F.2d 703 (C.A. 10).[11]

In effect, this is what the Trial Court did here (in addition to sentencing Petitioner for contempt); for, as we have seen, the Court appears to have ignored all of Petitioner's direct testimony except insofar as that testimony was corroborated by other witnesses.

Not only is this less drastic remedy required by the limitations imposed upon the Federal Court's contempt powers, but it relieves one who claims the Fifth Amendment privilege in good faith from the possibility of a criminal penalty (imposed without the procedural safeguards of the Bill of Rights), in the event it is eventually determined by an appellate court that the privilege was improperly claimed. Had the Trial Court here confined itself to "the least possible power adequate to the end proposed" by merely striking all of Petitioner's direct testimony, the question of the propriety of its ruling could then be litigated on appeal in the denaturalization case—a civil proceeding—without fear of criminal penalties in the event the claim was erroneously made. Where, however, as here, the more

[11] A more drastic remedy, provided by statute or court rule in some states, permits the trial court under such circumstances to strike the entire answer of the recalcitrant defendant-witness and enter judgment by default. See 144 ALR 372; 4 ALR 2d 348; and 14 ALR 2d 580. It has been held that the Federal Courts lack such authority. *Hovey* v. *Elliott*, 167 U.S. 409, 17 S.Ct. 841. In any event in a denaturalization proceeding the Government must prove its case regardless of the defendant's default. *Klapprott* v. *U. S.*, 335 U.S. 601, 69 S.Ct. 384, 388.

drastic power of summary contempt is invoked, the necessary effect is to inhibit conscientious witnesses from any bona fide invocation of the protection of the Fifth Amendment privilege, notwithstanding such invocation is pursuant to advice of counsel.

CONCLUSION

The Judgment Below Should Be Reversed.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN AND ROBB

By: s/ GEO. W. CROCKETT, JR.
Geo. W. Crockett, Jr.
Counsel for Petitioner
3220 Cadillac Tower
Detroit 26, Michigan
WO 3-6268

Dated: September 11, 1957

No. 5[illegible] 413

In the Supreme Court of the United States

OCTOBER TERM, 1956

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statement	2
Summary of argument	6
Argument	9
I. By her direct testimony, voluntarily given, petitioner necessarily waived her privilege and assumed the duty to respond to relevant cross-examination	10
II. The rule of waiver applicable to a compelled witness does not apply to petitioner's effort to present only her own version of events without being subject to cross-examination	16
III. In affirming the contempt conviction, the Court of Appeals did not rewrite the charge so that it was at variance with the contempt certificate of the District Court	20
Conclusion	22

CITATIONS

Cases:	
Alford v. *United States*, 282 U. S. 687	13
Andrews v. *Frye*, 104 Mass. 234	16
Arndstein v. *McCarthy*, 254 U. S. 71	17
Billeci v. *United States*, 184 F. 2d 394	14
Blau v. *United States*, 340 U. S. 159	17
Brown v. *Walker*, 161 U. S. 591	18
Caminetti v. *United States*, 242 U. S. 470	10, 16
Chicago City Ry. Co. v. *Canevin*, 72 Ill. App. 81	16
Counselman v. *Hitchcock*, 142 U. S. 547	17
Fitzpatrick v. *United States*, 178 U. S. 304	10, 16
Foster v. *Pierce*, 65 Mass. (11 Cush.) 437	19
Hoffman v. *United States*, 341 U. S. 479	17
Johnson v. *United States*, 318 U. S. 189	10, 14
Kemble v. *Lyons*, 184 Ia. 804	12
Knauer v. *United States*, 328 U. S. 654	6, 11

Cases—Continued

	Page
Mayo v. *Mayo*, 119 Mass. 290	19
McCarthy v. *Arndstein*, 262 U. S. 355	17
Orth v. *United States*, 142 F. 2d 969	11
Rogers v. *United States*, 223 U. S. 303	10
Ruffel v. *United States*, 271 U. S. 494	7, 10, 14, 16
Reagen v. *United States*, 157 U. S. 301	10
Roddy v. *Finnegan*, 43 Md. 490	16
Rogers v. *United States*, 340 U. S. 367	17
Snyder v. *Massachusetts*, 291 U. S. 97	12
Sperry v. *Moore's Estate*, 42 Mich. 361	12
State v. *Perry*, 210 N. C. 796	19
United States v. *Brooks*, 284 Fed. 908	16
United States v. *Eichenlaub*, 180 F. 2d 314, certiorari denied, 339 U. S. 983	11
United States v. *Hoag*, 142 F. Supp. 667	18
United States v. *Kenton*, 131 F. Supp. 576, affirmed, 224 F. 2d 803	16
United States v. *Nelson*, 103 F. Supp. 215	18
United States v. *Toner*, 173 F. 2d 140	13, 19
Walder v. *United States*, 347 U. S. 62	15

Statute:

Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U. S. C. 1451 (a), Section 304 (a)	2

Miscellaneous:

Federal Rules of Civil Procedure:	
Rule 43b	3, 6
Wigmore on Evidence (3d ed. 1940):	
Vol. 5, §§ 1373-1375	12
Vol. 5, § 1390	12
Vol. 8, § 2276	10

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 570

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 41–48) is reported at 234 F. 2d 140. The opinion of the District Court appears at R. 38–40.

JURISDICTION

The judgment of the Court of Appeals was entered on May 18, 1956 (R. 41), and a petition for rehearing was denied on June 12, 1956 (R. 49). The petition for a writ of certiorari was filed on July 12, 1956, and was granted on November 13, 1956 (R. 49).

QUESTION PRESENTED

Whether, upon the facts of this case, petitioner's election to take the stand and to give lengthy testi-

mony, as a witness in her own behalf, in answer to allegations made in the Government's complaint, constituted a waiver of her privilege against self-incrimination and accordingly exposed her to the requirement of answering certain material questions addressed to her on cross-examination.

STATEMENT

Petitioner seeks reversal of the judgment of the Court of Appeals for the Sixth Circuit unanimously affirming the judgment of the District Court for the Eastern District of Michigan, which held petitioner guilty of contempt and sentenced her to imprisonment for six months. The holding of contempt was grounded upon petitioner's refusal, during cross-examination in a denaturalization suit against her, to answer questions relating to membership in the Communist Party, after she had voluntarily testified in her own defense.

The complaint, seeking cancellation of petitioner's citizenship, was filed in April 1953, pursuant to Section 340 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U. S. C. 1451 (a), charging that citizenship had been procured, in 1946, by wilful misrepresentation and concealment of material facts (R. 1–6). According to the complaint, on August 22, 1946, in testimony before naturalization examiners and in her petition for naturalization, petitioner had falsely stated, under oath, that she had not been for a period of at least 10 years preceding that date a member of, or affiliated with, any organization teaching disbelief in or opposition to organized government; that she was not a disbeliever in organ-

ized government; that she was attached to the principles of the Constitution; and that she never was a member of the Communist Party (R. 2–3). The complaint alleged that from 1933 to at least February 1937 she had been a member of the Communist Party of the United States and of the Young Communist League, organizations that taught the overthrow by force and violence of the Government of the United States (R. 3). No appeal was taken from the judgment of the District Court cancelling petitioner's citizenship (Pet. Br. 7).

At the trial, petitioner was called by the Government as a witness pursuant to Rule 43 (b) of the Federal Rules of Civil Procedure. During her testimony under the rule, she denied membership in the Communist Party prior to her naturalization in 1946, and invoked the privilege against self-incrimination as to all questions concerning Communist Party membership and activities where the questions were unlimited in time or addressed to the period subsequent to 1946. In each instance, the District Judge sustained her claim of privilege (R. 11–19).

After conclusion of this examination under the rule, petitioner was not cross-examined by her counsel since he desired to "put her on on direct" (R. 19). Upon conclusion of the Government's case,[1] petitioner voluntarily became a witness in her own behalf (R. 19).

[1] Although petitioner's is the only testimony contained in the record before the Court, it is clear that there was independent evidence adduced to show membership in the Communist Party (see Pet. Br. 4). Throughout her examination by the Government, petitioner was questioned as to whether she knew certain

As a witness in her own behalf, petitioner testified to her membership and activities in the Young Communist League from about 1930 to January 1935 (the date of her alleged resignation) and stated that she had not engaged in any Communist activity from 1935 until her naturalization in 1946 (R. 20–22). She also affirmed the truthfulness of her statements made under oath in the period leading up to her naturalization (R. 24–25). She then testified concerning her activities and loyalties down to the date of the trial, as follows:

"Q. Are you willing to take up arms in defense of this country, in the event of any hostility between the United States and Russia?

"A. Yes.

"Q. Regardless of whatever the reason may be for any hostility between the government of the United States and the Government of Russia?

"A. That is correct.

"Q. In Question 28 you were asked: 'Are you a believer in anarchy, or the unlawful damage, injury or destruction of property, or of sabotage'? And you answered 'No'.

"Was that a true answer to that question?

"A. That was a true answer.

"Q. You say it was not only a true answer at the time you filed the petition, July 16, 1946, and is that the true answer today?

"A. It is true. It was a perfectly true answer to that question. I never believed in overthrowing any-

named individuals, and whether she was connected with them in Communist activity (R. 12, 15–18, 35).

thing. I believe in fighting for this country. I like this country. I never told anybody I didn't.

"Q. Did you ever teach or advocate anarchy or overthrow of the existing government in this country?

"A. Teach?

"Q. Did you ever teach the idea that we ought to overthrow the government of the United States?

"A. No, I never did.

"Q. Did you ever advocate that?

"A. No.

"Q. Did you ever say that we should?

"A. No, I never did.

"Q. To your knowledge, did you ever belong to any organizatio. that taught or advocated anarchy or the overthrow of the existing government in this country?

"A. No. As much as I know, I didn't belong, to destroy the country. I believe in helping the country, and helping the people. That was my life of living, not destroying the things that the people put up.

"Q. Are you attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States?

"A. That, I am." (R. 26.)

When, on cross-examination, she was asked whether she was now, or had ever been, a member of the Communist Party of the United States, petitioner claimed her privileg, under the Fifth Amendment (R. 32–33). The District Court ruled that, having taken the stand in her own defense, petitioner had waived her privilege, and directed her to answer (R. 33). Despite this directive, petitioner continued in her refusal and, as

a result, was held in contempt of court (R. 33-34, 38-40). Further contempt citations followed upon her refusal to answer related questions, either unlimited in time or directed specifically to the post-naturalization period, as to whether she attended Communist meetings and classes, and, in general, seeking to establish that she was an active member of the Party (R. 34-38). A number of these questions were precisely the same as those asked by the Government when petitioner was a witness under Rule 43 (b).

The Court of Appeals unanimously affirmed the contempt conviction on the ground that her voluntary testimony in her own behalf was of such nature that petitioner waived her privilege against self-incrimination.

SUMMARY OF ARGUMENT

1. In a denaturalization trial based on the charge that, on August 22, 1946, petitioner had given false testimony as to her then loyalties to the United States and as to her Communist Party affiliations for the preceding ten years, petitioner was first called as an involuntary witness. Her claim of privilege as to questions concerning her post-1946 Communist connections and activities was sustained—although her post-naturalization affiliations were directly relevant to the veracity of her statements made in the period leading up to her naturalization (*Knauer* v. *United States*, 328 U. S. 654, 668). Thereafter, petitioner elected to take the stand, this time as a witness in her own behalf, and testified that statements made during the naturalization proceeding were true when made; she further asserted her present loyalty to the United

States and non-membership, at any time, in any organization advocating overthrow of the Government of the United States. On cross-examination, she claimed the privilege as to questions concerning membership in the Communist Party immediately after 1946—questions directly bearing on the issues in the case and, most particularly, upon specific assertions made on direct examination. She was therefore properly held to have waived her privilege as to such cross-examination. For if, as is well settled, the criminal defendant by voluntarily testifying waives his privilege as to all material facts (*Raffel* v. *United States*, 271 U. S. 494), petitioner by freely testifying to her version of the case certainly waived her privilege against self-incrimination as to material cross-examination seeking to contradict her specific self-serving declarations.

To hold otherwise would allow in evidence petitioner's version of the case without her assertions being put to the test of truthfulness by relevant cross-examination. Such a result would be in direct negation of the fundamental concept that in an adversary proceeding testimony not subject to cross-examination is not proper testimony. Since, if the privilege is recognized, no inference may be drawn from the claim of privilege, the net result would be an opportunity to present a wholly one-sided and self-serving version of events.

Petitioner has not the slightest basis for claiming surprise at the Government's line of questioning. She was on notice that it would be pursued. More-

over, on direct examination by her own counsel, petitioner went into the very subject matter which she refused to discuss when relevant questions were put by opposing counsel.

2. Petitioner can obtain no comfort from cases which stand for the proposition that an *involuntary* witness does not waive his privilege until he proceeds to make an incriminatory disclosure. A witness who is subject to an order to testify, whether before a court or an inquisitorial body, has no option to assert a privilege until an incriminatory question is posed. Consequently, he cannot be deemed to have made any choices until such time as he chooses to respond to a line of inquiry which he might have closed off. But petitioner here had a choice. She was a voluntary witness. She was not compelled to take the stand in her own behalf. Beyond that, she chose, on direct examination, to deal with the very subject matter which she refused to discuss on cross-examination. The privilege is a privilege to remain silent. It is not a haven against contradiction. There is no privilege to tell an incomplete or a one-sided story and then close the door when an effort is made to test that story by cross-examination. It was appropriate, therefore, to exercise the contempt power in order to vindicate the principle, vital to the judicial process, that the court and the parties are entitled to all relevant testimony which is not privileged.

3. The Court of Appeals, in sustaining the contempt conviction, did not do so on grounds at variance with the original contempt citation of the District Court. At most, the Court of Appeals, relying

on the record before it, narrowed the finding of waiver from one conditioned only upon petitioner's voluntarily having been sworn as a witness to one holding that petitioner's voluntary, self-serving assertions resulted in waiver of the privilege as to relevant cross-examination on such testimony. In no sense can this be deemed equivalent to convicting petitioner on a charge not made.

ARGUMENT

We emphasize, at the outset, that the issue here is narrow—whether a defendant in a civil suit, who voluntarily took the stand and testified in her own behalf, could refuse, on the ground of privilege, to answer questions put to her on cross-examination which were directly relevant to the matters at issue and to the subject matter of her direct examination. This is not the case of a witness before an inquisitorial body. It is not the case of an ordinary witness in a civil suit who is compelled, by process of the court, to testify. When petitioner was called as such an involuntary witness, her claim of privilege was sustained. This is a witness who chose to take the stand in her own behalf and to answer questions on direct examination which related not only to her pre-naturalization, but also to her post-naturalization, loyalty to the United States. Then, faced with cross-examination as to matters which would have a direct bearing on the veracity of her specific assertions and her general credibility as a witness, she refused to answer those questions. The Government's basic position is that, in a trial in our courts, where the right of cross-

examination is regarded as a fundamental means of developing truth, a witness may not, by her own choice of strategy, present such a one-sided picture.

I

BY HER DIRECT TESTIMONY, VOLUNTARILY GIVEN, PETITIONER NECESSARILY WAIVED HER PRIVILEGE AND ASSUMED THE DUTY TO RESPOND TO RELEVANT CROSS-EXAMINATION

The law is settled that the criminally accused waives his privilege against self-incrimination by voluntarily taking the stand in his own defense. *Johnson* v. *United States*, 318 U. S. 189; *Raffel* v. *United States*, 271 U. S. 494; see, also, *Caminetti* v. *United States*, 242 U. S. 470, 492–495; *Powers* v. *United States*, 223 U. S. 303; *Fitzpatrick* v. *United States*, 178 U. S. 304, 315; *Reagan* v. *United States*, 157 U. S. 301, 305. The logic of this rule is that the one ultimate issue involved is the defendant's guilt or innocence; and that, by voluntarily taking the stand, in circumstances when every relevant question is necessarily either incriminatory or relevantly connected to an incriminatory inquiry, the defendant must be taken to have signified his intelligent choice to waive his privilege against self-incrimination. *Johnson*, *supra*, at 195; 8 *Wigmore on Evidence* (3d ed. 1940) § 2276.

That ratio rule is directly applicable to the facts of this case, albeit this is a civil proceeding. The issue involved was whether petitioner had, on August 22, 1946, wilfully given false testimony as to her then loyalty to the United States and as to her membership, during the preceding ten years, in the Commu-

nist Party of the United States. Proof that, immediately after the specific date of naturalization, she joined and thereafter retained membership in the Communist Party would be directly relevant to the issue of the veracity of her statements in the naturalization proceeding (*Knauer* v. *United States*, 328 U. S. 654, 668; *United States* v. *Eichenlaub*, 180 F. 2d 314, 316–317 (C. A. 2), certiorari denied, 339 U. S. 983; *Orth* v. *United States*, 142 F. 2d 969, 973 (C. A. 4)). Even so, so long as petitioner was an involuntary witness called by the Government, the District Court sustained her claim of privilege. But petitioner was not content to let matters rest there. She elected to take the stand again in order to testify as a witness in her own behalf. She did so, knowing full well that her post-1946 Communist affiliations were deemed by the Government relevant to the issue in the case. What is more, she proceeded, on her direct examination by her own counsel, to testify not only as to her pre-1946, but also as to her post-1946, sentiments and conduct. Cross-examination as to her Communist affiliations immediately after naturalization thus became directly relevant not only on the ultimate issue before the court, but also as bearing on petitioner's credibility. By her testimony in her own behalf, petitioner necessarily elected, at the least, to waive her privilege against being compelled to answer the Government's questions addressed to the very same subjects on which she voluntarily spoke. Petitioner apparently would have it that she could give a negative answer to her own counsel's question on the subject of membership

("To your knowledge, did you ever belong to any organization that taught or advocated anarchy or the overthrow of the existing government in this country?"), yet refrain from answering a Government question seeking to determine whether she had been in the Communist Party ("Are you now, or have you ever been, a member of the Communist Party of the United States?"). See R. 43.

Petitioner had the advice of counsel when she resumed the stand. She certainly must be taken to have understood that which is a commonplace even among laymen—that there is no way, in an adversary proceeding, to testify on a particular subject without being amenable to cross-examination on that subject by the other party.[2]

There may conceivably be some limitation on the broad principle that a person who voluntarily takes the stand and testifies in his own behalf waives the privilege as to *all* relevant cross-examination. Conceivably, some cross-examination which would be admissible as relevant to the issue of credibility might be deemed sufficiently far removed from the direct

---

[2] No elaborate discussion is needed on the proposition that testimony which is not subject to cross-examination is not regarded as valid testimony in adversary trials. *Snyder* v. *Massachusetts*, 291 U. S. 97, 105–106; *Alford* v. *United States*, 282 U. S. 687, 691. Thus, testimony under oath before an official authorized to administer oaths is not admissible if the opposing party has not had the opportunity to cross-examine. 5 *Wigmore on Evidence* (3d ed. 1940) §§ 1373–1375. Even where a witness gives testimony at trial, but dies before he can be cross-examined, the testimony is stricken because of the absence of opportunity for cross-examination. *Id.*, § 1390; *Kemble* v. *Lyons*, 184 Ia. 804; *Sperry* v. *Moore's Estate*, 42 Mich. 361.

testimony and the central issue in the case so that it might be concluded that sustaining the privilege would not really result in the admission of testimony which was not subject to cross-examination.[8] It is unnecessary in this case to speculate on this subject. As we have shown, the questions asked petitioner on cross-examination which she refused to answer were directly relevant to the central issue in the case and directly related to her own voluntary testimony on direct. Hence, having chosen to testify, she was obliged to submit to the concomitant burden of relevant cross-examination.

The necessity that testimony be subject to cross-examination disposes of petitioner's contention that the difference between a civil and a criminal proceeding justifies a different rule as to a party in a civil case from that recognized with respect to a defendant who takes the stand in a criminal case. To be sure, the failure of a party to a civil action to take the stand may be the subject of adverse comment. We may accept petitioner's argument (Pet. Br. 17–18) that this

[8] Thus, in *United States* v. *Toner*, 173 F. 2d 140, 144 (C. A. 3), where a compellable witness asserted the privilege as to certain questions posed on cross-examination, the court rejected the claim that the direct testimony should be stricken because not subject to full cross-examination (see *infra*, pp. 19–20), on the ground that there had been cross-examination of the matters directly in issue. By a parity of reasoning, it may be argued that a voluntary witness also retains his privilege as to matters remote to the main issue.

We do not concede that such should be the rule. Rather, we think that one who voluntarily takes the stand by that fact necessarily waives the privilege as to all relevant cross-examination, whatever the reasons that impel him to take the stand.

places greater pressure on a civil defendant to testify.[4] At most, however, this difference would go to the possibility discussed above, *i. e.*, that some remote cross-examination on issues going to credibility might be deemed subject to a claim of privilege by a party to a civil suit, even though in criminal cases a defendant who chooses to testify is held to have completely waived the privilege with respect to all inquiry relevant to the charge against him.[5] It certainly cannot be decisive on the issue here, which is whether one who has chosen to give testimony must submit to that cross-examination which is necessary to give the testimony the quality of evidence, *i. e.*, cross-examination directly related to the issues in the case and to the testimony given on direct. The rule that testimony, to be evidence, must be subject to cross-examination is the same in civil and in criminal cases. And the necessity that the fundamental purpose of cross-examination shall not be defeated by claim of privilege is highlighted by the rule, applicable generally to the privilege, that, if it is to be given effect, no inference can be drawn from the fact that it is claimed. See *Johnson* v. *United States*, 318 U. S. 189, 196; *Billeci* v. *United States*, 184 F. 2d 394, 397–398 (C. A. D. C.). Petitioner is thus asking this Court to rule that she may present her version of events, without being subject to cross-examination or to any adverse inference

[4] Note, however, this Court's comment in *Raffel* v. *United States*, 271 U. S. 494, 499: "We need not close our eyes to the fact that every person accused of a crime is under some pressure to testify, lest the jury, despite carefully formed instructions, draw an unfavorable inference from his silence."

[5] *Raffel* v. *United States*, 271 U. S. 494, 497.

because of the failure to respond thereto. She seeks to convert the right to silence into a right to give only half the evidence.

No constitutional protection extends that far. In *Walder* v. *United States*, 347 U. S. 62, holding that narcotics, inadmissible as obtained in violation of the Fourth Amendment, might be introduced by the Government to contradict the defendant's untrue statements that no narcotics were taken from him, this Court observed (347 U. S. at 65):

> It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths.

Similar reasoning applies here. The Government was properly prevented from compelling petitioner, while she was an involuntary witness, to answer questions which might incriminate her. But petitioner, having thereafter elected to testify freely in her own defense, may not employ the privilege as a shield against contradiction of possible untruths asserted in that testimony.

Under our system of jurisprudence, it is no less essential to test a civil defendant's testimony in his own behalf than it is a criminal defendant's. By choosing to testify, petitioner must certainly be taken to have waived her privilege, at least as to directly relevant cross-examination covering the very subject of her direct

testimony. *United States* v. *Kenton*, 131 F. Supp. 576, 578–579 (S. D. N. Y.), affirmed, 224 F. 2d 803 (C. A. 2); *United States* v. *Brooks*, 284 Fed. 908, 910 (E. D. Mich.); *Chicago City Ry. Co.* v. *Canevin*, 72 Ill. App. 81, 93; *Roddy* v. *Finnegan*, 43 Md. 490, 502; *Andrews* v. *Frye*, 104 Mass. 234, 236. As the decisions dealing with the question of waiver by the criminally accused emphasize, an accused "* * * ought not to be heard to speak alone of those things deemed to be for his interest and be silent where he or his counsel regarded it for his interest to remain so * * *." *Caminetti* v. *United States*, 242 U. S. 470, 494. "The safeguards against self-incrimination are for the benefit of those who do not wish to become witnesses in their own behalf and not for those who do." *Raffel* v. *United States*, 271 U. S. at 499; cf. *Fitzpatrick* v. *United States*, 178 U. S. 304, 315.

As stressed above, petitioner here is on the weakest of ground. She has not the slightest basis for a claim of surprise. Not only was she fully cognizant, when she resumed the stand, that the Government aimed to question her concerning her sentiments and her activities following the date of her naturalization; she, herself, plainly entered that realm in the testimony which she proceeded to offer in her own behalf.

II

THE RULE OF WAIVER APPLICABLE TO A COMPELLED WITNESS DOES NOT APPLY TO PETITIONER'S EFFORT TO PRESENT ONLY HER OWN VERSION OF EVENTS WITHOUT BEING SUBJECT TO CROSS-EXAMINATION

Petitioner grounds her argument upon the rule, to which this Court has given approval, that normally a

witness will not be held to have waived the privilege until he has testified to incriminating facts. *Rogers* v. *United States*, 340 U. S. 367; *Arndstein* v. *McCarthy*, 254 U. S. 71; *McCarthy* v. *Arndstein*, 262 U. S. 355. She argues that since, in her direct testimony, she admitted no incriminating facts, she had the right, as an ordinary witness, to stop short when asked questions to which the answers might be incriminating. The rule, however, has no application to the facts of this case.

As we have already pointed out, petitioner is not in the position of an ordinary witness who is being compelled by process of law to give testimony. Such a witness has no choice with relation to his testimony until he is at the point when he has a right to claim his personal privilege. And, in the absence of choice, there can, of course, be no waiver of privilege. When petitioner was called as an involuntary witness for the plaintiff, the rule for which she contends was recognized and applied. It was only when petitioner went beyond that point, when she affirmatively elected to present evidence in her own behalf, that she was held to have waived her privilege.

All of the cases upon which petitioner relies involved witnesses testifying under compulsion. In *Rogers* v. *United States*, 340 U. S. 367, the petitioner was an involuntary witness compelled under subpoena to appear before a grand jury; she was not, as here, a party defendant voluntarily taking the stand in

order to present her side of the case.[6] *McCarthy* v. *Arndstein*, 262 U. S. 355, 359, affirmed on rehearing, 266 U. S. 34, and *Arndstein* v. *McCarthy*, 254 U. S. 71, 72, involved an involuntary bankrupt compelled to appear before Special Commissioners for examination under Section 21 (a) of the Bankruptcy Act; *Brown* v. *Walker*, 161 U. S. 591, 597, a witness subpoenaed before a grand jury investigating an alleged violation of the Interstate Commerce Act; *United States* v. *Hoag*, 142 F. Supp. 667 (D. C. D. C.), a witness subpoenaed before a Senate subcommittee; *United States* v. *Nelson*, 103 F. Supp. 215 (D. C. D. C.), a witness subpoenaed before a House subcommittee. In *Hoag*, *supra*, which petitioner quotes with approval (Pet. Br. 12), the District Court significantly commented (142 F. Supp. at 672):

> The [criminally accused] is not required to testify, but may make his choice of testifying or not, with the right to have the jury instructed that his failure to testify creates no presumption against him. *The ordinary, non-defendant witness is required to appear and answer questions unless he properly claims that his answer may tend to incriminate him.* [Emphasis added.]

Logic may require the conclusion that one who is compelled to appear as a witness shall not be deemed to have waived his privilege against self-incrimination

---

[6] *Hoffman* v. *United States*, 341 U. S. 479; *Blau* v. *United States*, 340 U. S. 159, and *Counselman* v. *Hitchcock*, 142 U. S. 547, also cited by petitioner (Pet. Br. 12), deal not with the doctrine of waiver, but with the broader question of the scope of the privilege. In any event, they also involved compelled testimony before inquisitorial bodies.

until such time as he voluntarily discloses an incriminatory fact; for, until then, it cannot be said that he elected to speak when he might have remained silent. But that same logic no less requires the conclusion that one who has had his choice to speak or to refrain, and has knowingly elected to testify, must speak fully. There is no intermediate choice, no halfway house, between silence and the whole truth. The privilege protects the right to silence, but it is not a haven against contradiction. It does not afford an interested party the opportunity to "hit and run"—to offer self-serving testimony and then avoid that searching cross-examination which is the best guide to its reliability. One cannot "waive" for purposes of answering the questions of one's own lawyer and assert privilege for purposes of avoiding the questions of opposing counsel. The principle has particular force when the questions are addressed to the self-same subject matter.

It may be suggested that if a compelled witness, who has already testified on direct examination, frustrates cross-examination by an acceptable claim of privilege, the remedy invoked is to strike the direct testimony (cf. *State* v. *Perry*, 210 N. C. 796; *Foster* v. *Pierce*, 65 Mass. (11 Cush.) 437, 438; *Mayo* v. *Mayo*, 119 Mass. 290, 292[7]), and that this remedy, without any invocation of the contempt power, would

[7] This same principle was recognized in *United States* v. *Toner*, 173 F. 2d 140, 144 (C. A. 3), discussed in note 3, page 13, *supra*, although the court there held the matters as to which the claim of privilege was directed were so remote from the direct testimony as not to justify a ruling that the entire testimony should be stricken.

also suffice in the case of the voluntary witness.[8] The answer, of course, is that the fundamental concern of the judicial process is the development of the truth. The court and the parties are entitled to the aid of all relevant testimony. While this interest in the development of the facts must certainly give way in the face of a valid claim of privilege, it is a controlling interest when there is no privilege to assert or when the privilege has been waived. A party who appears as a volunteer witness has no option to advance and to retreat as his sense of convenience or of strategy dictates. Such a witness, we submit, is not free to answer the questions of his own counsel on a particular subject and then take refuge in a claim of privilege when questions by opposing counsel on that subject prove uncomfortable. Nothing less than the exercise of the contempt power is adequate to prevent resort to this tactic of "hit-and-run." Nothing less will protect the dignity of the courts and the integrity of their proceedings.

III

IN AFFIRMING THE CONTEMPT CONVICTION, THE COURT OF APPEALS DID NOT REWRITE THE CHARGE SO THAT IT WAS AT VARIANCE WITH THE CONTEMPT CERTIFICATE OF THE DISTRICT COURT.

Petitioner argues (Pet. Br. 19–22) that the finding of waiver by the District Court was based solely on petitioner's taking the stand; that the Court of Appeals

[8] The argument would apply in principle to the criminal defendant as well as to the civil defendant.

found waiver because of the nature of the direct testimony; and that, as a consequence, petitioner now stands convicted on a charge not made. This contention has no substance. To begin with, an examination of the trial record shows that it was petitioner's act in taking the stand *and* testifying in her own behalf, rather than the mere fact that she was voluntarily sworn as a witness, that impelled the trial court's ruling (R. 33–34, 38–40). Even supposing that the trial judge held petitioner in contempt solely because of her voluntarily being sworn in her own defense, the affirmance by the Court of Appeals would not constitute a prohibited re-evaluation of the facts. On the contrary, the affirmance by the Court of Appeals constituted, at most, a narrowing of the finding of the District Court. The Court of Appeals held in substance that, whether or not *any* testimony by petitioner would have resulted in a waiver of her privilege, the specific and lengthy testimony that was actually given in this case necessarily had that result. (R. 46.) In reaching this decision, the Court of Appeals did not rely upon a factual determination at variance with that of the District Court, but relied properly on the record before it.

In short, the affirmance by the Court of Appeals did not constitute a rewriting of the contempt certificate at variance with the District Court's determination, but at the most a finding more restricted than that of the District Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeal should be affirmed.

J. Lee Rankin,
Solicitor General.

Warren Olney III,
Assistant Attorney General.

Beatrice Rosenberg,
Jerome M. Feit,
Attorneys.

March 1957.

No. ~~570~~ 43

In the Supreme Court of the United States

OCTOBER TERM, 1956

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPRINT OF FULL OPINION OF THE DISTRICT COURT

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 570

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPRINT OF FULL OPINION OF THE DISTRICT COURT

The opinion of the district court, as it appears at pages 38-40 of the printed record, does not constitute the complete opinion of the district court but only that portion thereof in which the district court disposed of the issue of contempt of court. Since we believe that the complete opinion of the district court should be available to this Court, we reprint that opinion in full in the pages which follow.

J. LEE RANKIN,
Solicitor General.

UNITED STATES OF AMERICA IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

No. 12,628

UNITED STATES OF AMERICA

vs.

STEFENA BROWN

At a session of said court, held in the Federal Building, Detroit, Michigan, February 18, 1955.

Present: Honorable Ralph M. Freeman, District Judge, Presiding.

APPEARANCES:

Dwight K. Hamborsky, Assistant United States Attorney, appearing on behalf of The United States.

Harold Norris, attorney for the Defendant.

OPINION OF THE COURT

The COURT: This is a suit filed by the United States of America against Stefana Brown to cancel her citizenship. It is undisputed that the defendant was an alien and a citizen of Poland prior to November 25, 1946. It is also undisputed that she entered the United States on December 26, 1912, at which time she was approximately two years of age and a citizen of Poland.

The defendant filed an application for a certificate of arrival, and a preliminary form for petition for naturalization on July 16, 1946, or at least there has been dis-

played an application bearing that date, which was, I believe, received and filed with the Immigration and Naturalization Service.

Mr. HAMBORSKY: The one in the middle is the first filing there. I think that was July 18, your Honor, in the middle there. (Indicating.)

The COURT: That was the first filing?

Mr. HAMBORSKY: Yes.

The COURT: She filed her petition for naturalization, I do not know when; I cannot tell from looking at it.

Mr. HAMBORSKY: That would be the same date. That is typed up right on it, in regard to the preliminary form.

The COURT: July 16, 1946. That indicates that her petition for naturalization was filed in the United States District Court for this District on August 22, 1946, is that correct?

Mr. HAMBORSKY: That would be the final petition, Exhibit 2.

The COURT: In any event, she was naturalized in the United States District Court for the Eastern District of Michigan on November 25, 1946.

It is the claim of the Government in this case that the defendant procured her naturalization illegally and by fraud, in that the defendant was a member of the Communist Party of the United States at some time during a period of ten years prior to the time that her petition for naturalization was filed.

It is the claim of the Government that it was some time during a ten-year period preceding the time she became naturalized?

Mr. HAMBORSKY: No, the filing.

The COURT: The filing?

Mr. HAMBORSKY: Yes.

The COURT: That is what I thought.

Mr. HAMBORSKY: July 16, 1946.

The COURT: It is also the claim of the Government that in filing her petition she was untruthful in answering certain questions, particularly question number 28, wherein she was asked whether or not she was a believer in anarchy, or the unlawful damage, injury or destruction of property, or sabotage, to which question she gave the answer, "No"; and also that she was untruthful in answering "No" to the question as to whether or not she belonged to or whether she was associated with any organization which teaches or advocates anarchy or overthrow of existing government in this country.

The Government also contends that the Naturalization Department asked her, at the time she presented herself for examination, whether or not she was a member of the Communist Party at any time, to which she answered "No".

It is the claim of the Government that the defendant exercised fraud in procuring her naturalization by answering three questions untruthfully, with respect to whether or not she was a member of the Communist Party, and concealed that fact from the Examiner.

It is the claim of the defendant in this case that she did not illegally or fraudulently in either respect procure her citizenship by naturalization.

The Government has introduced testimony here to the effect that the defendant was a member of the Communist Party during the year 1936 and subsequent thereto. As I recall it, the testimony of one witness indicated that she was a member of the Communist Party as late as 1951. The Government witnesses also testified that the defendant attended a number of closed meetings

of the Communist Party from time to time, and also that only members of the Communist Party in good standing could attend closed meetings. The testimony of Government witnesses was also to the effect that she was also active in the affairs of the Communist Party in the distribution of Communist literature and otherwise.

It is the claim of the Government that she joined what was known as the Young Communist League, I think in the year 1930 or thereabouts, and that she continued to be a member of the Young Communist League until the early part of 1935, at which time she discontinued her membership in that League, and that her husband at that time was notified that his membership in the Communist Party was terminated.

The defendant has also testified that she was active in the affairs of the Young Communist League during that period of time because of the economic depression of the early 1930's, and that she was active in that respect because of her desire to help the underprivileged people.

The Court has given careful attention to all the testimony in this case. He has weighed the testimony carefully and has evaluated it. The Court, in reaching the conclusions and the findings which will be announced, has not given any consideration whatever to the testimony elicited from the defendant with respect to the activities of her husband, which testimony the Court has, I think, already stricken from the record.

The Court finds that the defendant was a member of the Communist Party during a substantial part, if not all, of the ten-year period prior to the filing of her petition for naturalization.

The Court finds that among the aims and objectives of the Communist Party during that time was to over-

throw the Government of the United States by force and violence.

It is undisputed that the defendant was a member of the Young Communist League until the early part of 1935, which the Court believes to be the youth section of the Communist Party; and that upon attaining the age of 25 the defendant thereupon became a member of the Communist Party and was active in the affairs of the Communist Party.

The Court finds that the defendant attended many closed meetings of the Communist Party at which only members of the Communist Party in good standing could attend. I also find that the defendant was active in handling certain literature printed and distributed by the Communist Party, which literature was subversive and which also advocated the overthrow of the Government of the United States by force and violence. I find that the defendant wilfully, knowingly and understandingly prepared or assisted in the preparation of her petitions for naturalization, Exhibits 1 and 2 in this case; that she understood the contents thereof and submitted such petitions and exhibits to the Naturalization Office.

I find that the then Naturalization Examiner, Mr. Austin, I think his name was, did ask the defendant, during his examination of her, whether or not she had ever been a member of the Communist Party, and that she at that time answered "No".

I also find that at that time, or at least within ten years prior to the time she filed her petition, that she had been a member of the Communist Party.

I find that the defendant concealed the fact of her membership in the Communist Party from the Naturalization Service and the Examiner, in connection with

her application for naturalization, and that she misinterpreted that fact to the Naturalization authorities.

It is, therefore, the conclusion of this Court that the defendant procured her naturalization on November 25, 1946, illegally, in that she had been a member of the Communist Party for some period of time during the ten-year period immediately preceding the filing of her petition for naturalization.

I also conclude that, due to the fact that the defendant misrepresented to the Government and concealed from the Government the fact that she had been a member of the Communist Party during the ten-year period, or any part of that time, that she was therefore not of good moral character, not attached to the principles of the Constitution, and not well disposed to the good order and happiness of the United States.

I also conclude, as a matter of law, from the evidence in this case, that the defendant was naturalized and procured her citizenship fraudulently, in that she did not disclose to the Naturalization Authorities by way of her petition, and also by way of response to questions of the Naturalization Examiner, that she was a member or had been a member of the Communist Party.

The Court is convinced that the defendant did entertain a mental reservation at the time she procured her citizenship that she was renouncing her allegiance to her native land. She did not intend to renounce her allegiance, and she did not honestly and truthfully accept allegiance to the United States.

It is beyond the power of this Court to understand how any person can accept United States citizenship, with all it offers—it is the most priceless thing this

Government can bestow upon any person—and remain attached to the principles of Communism.

The Court is convinced, not only from the testimony in this case, but I think it it so well known now that the Court can take judicial notice of it, that the aims and purposes of Communism are to overthrow the Government of the United States by force and violence. But I am not basing my decision upon that. I am basing my decision and the findings and conclusions I have reached upon the evidence in this case.

Therefore, it is the order of this Court that the order heretofore entered in the naturalization proceedings of the defendant, admitting her to citizenship, be revoked and set aside, and that her certificate of naturalization be cancelled, for the reasons that I have given already; and that her certificate of naturalization be delivered and surrendered to the Clerk of this Court, and to be transmitted by him to the Commissioner of Immigration and Naturalization at Washington, D. C., and that a certified copy of this order go to the Commissioner of Immigration and Naturalization in Washington, and that the defendant be forever restrained and enjoined from claiming any right, privilege, benefit, or advantage whatsoever under this certificate of naturalization.

In making the findings I have just made, and the conclusions reached in this case, I have in mind that the rule and the test is that the Court should be convinced by clear and unequivocal testimony, by clear, unequivocal and convincing evidence, that the defendant did procure her citizenship illegally and fraudulently. I have applied that rule to my thinking in this case and to the findings and conclusions reached.

An order may be prepared in accordance with this

decision and opinion of the Court, and presented to the Court.

I have one other matter to dispose of. This morning the defendant refused to answer certain questions submitted or propounded to her by the Government. She refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment. At that time I cautioned the witness and explained to her that she was required to answer; that she had waived the benefit of the Fifth Amendment, she had waived the right to claim any privileges under the Fifth Amendment, by reason of having testified as a witness in her own behalf.

After I held the defendant in contempt of court a number of other questions were propounded, and to those questions the defendant also refused to answer, relying on the Fifth Amendment, her right not to testify by reason of the protection afforded her by the Fifth Amendment.

I repeat again, and I find again that the defendant is in contempt of this Court for refusing to answer the questions that the Court directed her to answer. In this connection I will now dictate upon the record an order which the Court feels is necessary under the rules of this Court. This order is to be transcribed and presented to the Court for signature, and to be entered of record.

In this case the defendant was called to the witness stand as the Government's first witness, under the court rule; and during her examination the defendant refused to answer certain questions propounded to her by the District Attorney, claiming her privilege not to answer by reason of the Fifth Amendment, and the Court allowed her to claim that privilege. At the close

of her examination as a Government witness under the court rule, she was submitted for cross-examination by her own counsel, who stated at that time as follows:

> "If your Honor please, this is all examination under the statute, and I want to reserve the right to go into the matter with this witness. I won't cross-examine the witness at this point. I will put her on direct."
>
> "The Court: All right. That is all."

When the Government rested its case, defendant's counsel, Mr. Norris, stated as follows:

> "I would like to call Mrs. Stefania Brown.
>
> The Court: All right. The record may show that Mrs. Brown has been previously sworn as a witness, and has already testified in this case. It will not be necessary to swear her as a witness again.
>
> Mr. Hamborsky: For the purpose of the record, they offer the witness to testify as a defense witness.
>
> The Court: Yes, I think that is right; is it, Mr. Norris?
>
> Mr. Norris: That is right, your Honor.
>
> The Court: You are calling her as your witness?
>
> Mr. Norris: That is right. The plaintiff has rested."

I have quoted there from the transcript of what appears at the close of the Government's examination of the defendant when called as a Government witness, and also what occurred at the close of the Government's case.

The defendant was then examined by her own counsel at length with respect to the subject of this suit, and

at the end of such direct examination the District Attorney asked of the defendant certain relevant and material questions with respect to these proceedings, on a number of which questions the defendant refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment.

The Court directed the defendant to answer the questions, and she refused.

The Court directed that the testimony involved on the cross-examination of this witness by the District Attorney be transcribed and made a part of the record in this case, and this order, so that counsel and any reviewing court may see exactly what occurred and the nature of the questions asked of the defendant.

The Court is of the opinion that the defendant, in taking the stand as a witness in her own behalf, waived the right to exercise her privilege not to answer questions which might tend to incriminate her, by reason of the Fifth Amendment. And, having refused to answer a number of questions asked of her by the District Attorney, and having been directed by the Court to answer the questions, and having refused to answer the questions, the Court finds the defendant is in contempt of this Court.

Of course, this is a contempt that occurred within the presence of the Court.

Having found the defendant in contempt of Court, the Court, therefore, shall impose punishment for such contempt.

It is the sentence of this Court that the defendant be committed to the custody of the Attorney General of the United States for a period of six months, for this contempt of Court.

That is all.

Mr. Norris: If your Honor please, may I ask for a stay on that.

The Court: Just a minute.

Mr. Norris: If your Honor please, I should like to ask for a stay on that. I believe there is a substantive question of law involved, as to whether or not, in a civil case, under the circumstances involved in this case, that the defendant did waive rights under the Fifth Amendment. I believe I made that statement when your Honor accorded me an opportunity to make that statement during the proceedings. And because there is a substantive question involving a fundamental right, I would like to take this opportunity, if I may, to ask for a stay of sentence, in order that we might consider the question of appeal on that particular proposition.

The Court: I want to give you every right to have this question determined by an appellate court.

Mr. Norris: At least, I think we would want the opportunity to consider whether or not we will.

I want to state at this time that there is a fundamental question. The state of the law is, in my opinion, if I may say it, not so clear, though I respect your Honor's ruling, and I, of course, will do all that I can to have it enforced. But I do want to ask this opportunity.

The Court: I will stay this sentence, so that you may have an opportunity to appeal this matter to the appellate court. How long a stay do you want?

Mr. Norris: At least 20 days, if I may.

The Court: All right, I will give you a stay of 20 days.

Mr. Norris: Will the defendant be released to my custody?

The Court: I beg your pardon?

Mr. Norris: Can the defendant be released to me, on a personal bond, to be present for any future proceedings?

The Court: Has the Government any objection to a personal bond?

Mr. Hamborsky: I have no objection to a personal bond, your Honor.

The Court: All right.

Mr. Hamborsky: The only thing is, may I suggest something, that a notice of claim of appeal be filed immediately, within a day or two, so that we can be sure of their position. In other words, if he files a claim 20 days from now——

The Court: How long do you want? When would you file your claim?

Mr. Hamborsky: (Continuing) He would then have 30 days after that to get any pleadings in or briefs.

Mr. Norris: If your Honor please, I do believe that is rushing matters quite a bit. This is an extraordinary sentence, under the circumstances, and I do believe an appeal——

The Court: I believe an appeal is a very simple act, isn't it?

Mr. Norris: Yes.

Mr. Hamborsky: Yes. That is all I want to know. I do not want it to be frivolous.

Mr. Norris: We are not treating it as a frivolous matter.

The Court: You file your claim within five days. If it was an involved act, I would not expect you to do the impossible. But filing a claim of appeal is quite a simple matter, as I understand it.

Mr. Hamborsky: It is a simple act. If they decide they do not want to file an appeal, they can withdraw it.

But the claim of appeal is a simple act; it is just filing a paper.

Mr. Norris: May we have 10 days on that claim of appeal, your Honor?

The Court: What is the statutory time, the time provided by the rules for that, do you know?

Mr. Hamborsky: Well, it is 30 days after the claim of appeal, that they must submit a brief. But I think that the statutory time on appeal is 60 days. I think it is 60 days that they have to file that, then.

The Court: Claim of appeal?

Mr. Hamborsky: I think it is different in civil cases than it is in criminal cases.

Mr. Norris: I do not think I am asking for a great deal, your Honor, to ask for 10 days to decide on a claim of appeal.

The Court: I will do that. I will give you that. I will give you a stay of this sentence, and I will admit the defendant to bail on $1000 personal bond, provided claim of appeal in this matter is filed within 10 days. If it is not, the stay will be set aside and the bond cancelled.

Mr. Norris: Thank you, your Honor.

(The defendant, Stefana Brown, was sworn to a $1000 personal bond.)

Mr. Hamborsky: If it were a civil contempt, which it is not, that would be 60 days. But in a criminal contempt, it is 10 days.

The COURT: I think it is 10 days. That is what the rule provides, and I gave him that 10 days.

(Which were all of the proceedings had in said cause at said time and place.)

District Judge.

STATE OF MICHIGAN,
County of Wayne; ss:

I, HARRY R. HOWSE, do hereby certify that the foregoing and attached transcript is a full, true and correct transcript of my shorthand notes taken in said cause, at said time and place.

HARRY R. HOWSE,
Official Reporter.

Detroit, Michigan, March 1, 1955.

No. 43

In the Supreme Court of the United States

OCTOBER TERM, 1957

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON REARGUMENT

J. LEE RANKIN,
Solicitor General,

WARREN OLNEY III,
Assistant Attorney General,

RALPH S. SPRITZER,
Assistant to the Solicitor General,

BEATRICE ROSENBERG,
Attorney,
Department of Justice,
Washington 25, D. C.

CITATIONS

	Page
Cases:	
Blau v. *United States*, 340 U. S. 159	7
Brown v. *Walker*, 161 U. S. 591	7
Burr, Ex parte, 4 Fed. Cas. 791	8
Carlson v. *United States*, 209 F. 2d 209	12
Cobbledick v. *United States*, 309 U. S. 323	7
Debs, In re, 158 U. S. 564	1
Fernandez, Ex parte, 10 C. B. (N. S.) 3, 142 Eng. Reprint 349	4, 5, 9
Gompers v. *Bucks Stove & Range Co.*, 221 U. S. 418	8
Grant v. *United States*, 227 U. S. 74	7
Hoffman v. *United States*, 341 U. S. 479	7
Hudgings, Ex parte, 249 U. S. 378	5, 9, 10
Meckley, In re, 137 F. 2d 340, certiorari denied, 320 U. S. 760	11
Michael, In re, 326 U. S. 224	9, 10, 11
Nash v. *United States*, 229 U. S. 373	6
Nye v. *United States*, 313 U. S. 33	9
Offutt v. *United States*, 348 U. S. 11	13
Regan v. *New York*, 349 U. S. 58	7
Rogers v. *United States*, 340 U. S. 367	7
Ullmann v. *United States*, 350 U. S. 422	7
United States v. *Appel*, 211 Fed. 485	11
United States v. *McGovern*, 60 F. 2d 880	12
United States v. *United Mine Workers*, 330 U. S. 258	8, 12
United States v. *White*, 322 U. S. 694	7
Weiler v. *United States*, 323 U.S. 606	10
Wheeler v. *United States*, 226 U. S. 478	7
Wilson v. *United States*, 221 U. S. 361	7
Statutes:	
Act of March 2, 1831, 4 Stat. 487	9
18 U. S. C. 401	9, 10
18 U. S. C. 401(1)	3, 9
18 U. S. C. 401(3)	3, 9
Miscellaneous:	
12 Am. Jur., *Contempt*, § 15	5
The Dialogues of Plato, Jowett trans. (Britannica ed., 1952), p. 216	3

Miscellaneous—Continued **Page**

8 Halsbury, *Laws of England* (3d ed., 1954), pp. 5-6 5
Stansbury, *Report of the Trial of James H. Peck*, p. 398 1

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 43

STEFENA BROWN, PETITIONER

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

SUPPLEMENTAL BRIEF FOR THE UNITED STATES ON REARGUMENT

In her supplemental memorandum, petitioner assumes, for purposes of argument, that her direct testimony, given as a witness in her own behalf, constituted a waiver of privilege and that she was consequently obliged to answer, on cross-examination by Government counsel, the concededly relevant questions designed to test the veracity of her "general denials" (the term is petitioner's; Supp. Memo., p. 7).[1]

Petitioner argues that, even on this assumption, there was not, in the circumstances of this case, a

[1] The proposition that there was a waiver of privilege was briefed by the Government, last Term, and will not be reargued herein.

contempt. She contends further that, in any event, there was not such a contempt as would warrant the imposition of the sentence (six months' imprisonment) which was adjudged.[3]

1. The acts of contempt in this case consisted of deliberate and persistent refusals, in the face of the court, to comply with direct orders of the court that petitioner answer specific questions (R. 33-40).[4] The orders to answer were given only after the court had carefully considered and expressly overruled petitioner's claim of privilege.[5]

The disobedience of the court's directions to an-

[3] The points now argued by petitioner were not raised in the petition or argued in petitioner's main brief.

[4] It may be conceded that the refusals were in polite terms; they were nonetheless deliberate and persistent.

[5] The claim of privilege was asserted at the session of February 17, 1955, at which point the court entertained argument from counsel and reserved its ruling (R. 32). The following morning, the court overruled the claim (R. 33). (As is evident from the context and from the docket entries which appear at R. 1, the date appearing at R. 33 should read February 18, 1955, rather than February 16, 1955.) The court's opinion on the contempt issue, rendered the same day (February 18, 1955), states (R. 38):

> I have one other matter to dispose of. This morning the defendant refused to answer certain questions submitted or propounded to her by the Government. She refused to answer, claiming her privilege not to do so by reason of the Fifth Amendment. At that time I cautioned the witness and explained to her that she was required to answer; that she had waived the benefit of the Fifth Amendment, she had waived the right to claim any privileges under the Fifth Amendment, by reason of having testified as a witness in her own behalf.

swer the questions were acts of contempt which fall squarely within the class of contempts defined in 18 U. S. C. 401 (3), which states:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> * * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Refusal to obey a direct and lawful order of the court is, of course, a classic form of contempt—one which has always been within the embrace of this country's contempt statutes and has had a long history at common law. See Brief for the United States in *Green and Winston* v. *United States*, No. 100, this Term, pp. 29-33, 72-76. There is no requirement, as in the case of other forms of misbehavior,[5] of a finding of obstructive effect, a circumstance which has its obvious explanation in the fact that a refusal to comply with a court's lawful order is necessarily damaging to the standing of the courts and to the administration of justice.[6] Judicial authority would soon be undermined if the courts lacked the indispensable

---

[5] Section 401 (1) makes punishable as a contempt "[m]isbehavior of any person in its [the court's] presence or so near thereto as to obstruct the administration of justice."

[6] In the words of Socrates to Crito, rejecting the latter's proposal for Socrates' escape from prison: "Do you imagine that a state can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and trampled upon by individuals?" *The Dialogues of Plato*, Jowett trans. (Britannica ed., 1952), p. 216.

power to compel compliance with their rulings. As this Court has stated, "the power of a court to make an order carries with it the equal power to punish for a disobedience of that order." *In re Debs*, 158 U. S. 564, 594. In Lord Erskine's words, "Every court must have power to enforce its own process and to vindicate contempts of its *authority;* otherwise the *laws would be despised*, and *this* obvious *necessity* at once produces and limits the process of attachment" (quoted in Stansbury, *Report of the Trial of James H. Peck*, p. 398; emphasis in original). We would also give particular emphasis to the thought expressed in a leading English contempt case (one also involving a refusal to testify by a witness who had made an invalid claim of privilege): "The power of commitment for contempt is indispensable to the administration of public justice; *and the knowledge that it is indispensable renders its exercise generally unnecessary.*" *Ex parte Fernandez*, 10 C. B. (N. S.) 3, 57; 142 Eng. Reprint 349, 370 (emphasis added).[7]

---

[7] The essential facts of the *Fernandez* case may be briefly stated. Fernandez had appeared before a Royal Commission and given testimony implicating one Charlesworth in corrupt election practices. Charlesworth was thereafter charged with bribery and Fernandez summoned as a witness for the Crown. At the trial, Fernandez asserted privilege against self-incrimination, notwithstanding the fact that the Royal Commission had granted him a certificate of immunity from prosecution. It was his position that the certificate afforded him less than complete protection because he might still be liable to impeachment by the House of Commons. The claim was overruled as legally insufficient and the witness

Certainly, a refusal to testify (or to be sworn as a witness) is no exception to the rule that disobedience of a court order is punishable as a contempt. *Ex parte Hudgings*, 249 U. S. 378, 382; 8 Halsbury, *Laws of England* (3d ed., 1954) 5-6; *Ex parte Fernandez*, *supra*; and see p. 11, note 15, *infra*. For a collection of state court cases, see 12 Am. Jur., *Contempt* § 15. Indeed, the need for the contempt power is most striking when the act of disobedience takes place in the presence of the court and in the midst of a proceeding.

2. Petitioner argues, on two grounds, that in this case the disobedience of the orders to testify was not contemptuous: firstly, that her refusal was based upon an opinion, entertained in good faith, that the court had erroneously overruled her claim of privilege; secondly, that her refusal cannot be said to have obstructed the judicial process, as evidenced by the fact that the Government's case prevailed notwithstanding the Government's inability to elicit the testimony which it sought. We believe that neither of these arguments is tenable.

a. There is no finding as to whether petitioner's refusal to abide by the court's ruling was the product of a good-faith belief that the court had erred or was the outgrowth of a calculated effort to secure

---

directed to testify. Relying on advice of counsel, he persisted in refusal and was sentenced for contempt to six months' imprisonment and a fine of £500. On application for a writ of habeas corpus, the Court of Common Pleas denied relief in accordance with the unanimous views of Erle, C.J., Willes and Byles, JJ.

an impermissible advantage.* In our view, no finding on this point was required, for we take it to be settled beyond doubt that one who refuses to abide by a ruling or order of a court does so at his peril. It is extremely difficult to conceive of any other principle upon which the courts could operate. Can parties and witnesses ignore the lawful rulings of the tribunal and then be heard to say, "There was no contempt because I sincerely disagreed with the ruling and considered it wrong."? The question, we believe, answers itself. As Justice Holmes pointed out in *Nash* v. *United States*, 229 U. S. 373, 377, "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." Even more clearly, if a person chooses to disobey an explicit court ruling on the basis of his own estimate of what the law is, he takes the risk that the judge may be correct and that he may be wrong.

Over the years, the validity of rulings denying claims of Fifth Amendment privilege has been tested in the manner that was utilized here—by refusing to obey a direction to answer and challenging the lawfulness of the direction on appeal from a sentence

---

* Petitioner would have this Court assume that her highly unusual course of action—coming forward as a witness in her own behalf to state general denials and then taking refuge in a claim of privilege when cross-examined—was the result of a misguided notion as to the character of the privilege against self-incrimination. But this is by no means self-evident, and we fail to see how an appellate court could make the assumption.

for contempt.[9] See, *e. g.*, *Brown* v. *Walker*, 161 U. S. 591; *Wilson* v. *United States*, 221 U. S. 361; *Wheeler* v. *United States*, 226 U. S. 478; *Grant* v. *United States*, 227 U. S. 74; *United States* v. *White*, 322 U. S. 694; *Blau* v. *United States*, 340 U. S. 159; *Rogers* v. *United States*, 340 U. S. 367; *Hoffman* v. *United States*, 341 U. S. 479; *Regan* v. *New York*, 349 U. S. 58; *Ullmann* v. *United States*, 350 U. S. 422. In eight of the ten cited cases (*Blau* and *Hoffman* are the two exceptions), this Court concluded that the claim of privilege was not a valid one. In these eight, it sustained the contempt sentences without any suggestion that the good faith of the party in making the claim of privilege was relevant to the question of whether there was a contempt.[10] Yet, it will hardly be gainsaid that in all eight the legal issue of privilege was a substantial one. Indeed, five of the eight cases were decided over vigorous dissent.[11]

b. A wilful disobedience of a lawful order of the court is necessarily damaging to the standing of the courts and to the administration of public justice. This is but to say that a lawful order is one which has a legitimate purpose in terms of the function and jurisdiction of the tribunal which issues it. Here, the purpose was to secure testimony relevant to the issues which the court was called upon to

---

[9] In some situations, this may be the only means of testing the validity of the ruling. See *Cobbledick* v. *United States*, 309 U. S. 323, 328.

[10] We know of no decision which makes such a suggestion.

[11] The exceptions are *Wheeler*, *Grant* and *White*.

decide, a purpose fundamental in the trial of all law suits. While that purpose must give way, to be sure, when it conflicts with a valid claim of privilege, it is a controlling consideration when there is no privilege to assert.

It is no answer that the Government's suit in any event prevailed. The contemptuous character of a refusal to testify is scarcely altered by the fact that it failed to produce a complete paralysis of the proceeding. It is enough that the evidence refused was relevant and not privileged. It is enough, otherwise stated, that the direction to answer was a proper and a lawful one.

The basic fallacy in petitioner's argument is that it overlooks the fact that the criminal contempt power is designed to vindicate the authority of the court and the public interest which it represents, not to redress harm (or potential harm) to an adverse litigant. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441.[12] When a court's lawful orders are impugned or disobeyed, the standing of the courts and their ability to discharge their responsibilities are necessarily affected adversely, whether or not the act of resistance proves crucially damaging to the other party (or parties) in the particular case.[13]

---

[12] See, also, *Ex parte Burr*, 1 Fed. Cas. 791, 797 (C. C., Dist. of Col.): "It is the public interest, and not the personal pride of the judges * * * which claims this power for the courts."

[13] Compare this Court's observation in *United States* v. *United Mine Workers*, 330 U. S. 258, 294, that wilful violations of an injunction may be punishable as criminal con-

It is doubtless for this reason, as noted above, that wilful disobedience of a lawful order of the court is defined by statute as a contempt, whereas certain other forms of misbehavior are deemed contempts of court only when shown to have had an obstructive effect upon the proceedings. The public knowledge that the courts can and will enforce their lawful orders gives those orders force and respect; by the same token, this awareness makes relatively infrequent the need for resort to the contempt power. *Ex parte Fernandez, supra.*

Relying on *Ex parte Hudgings*, 249 U. S. 378, and *In re Michael*, 326 U. S. 224, petitioner argues that just as perjury, without more, is not deemed punishable as a contempt, so, also, wilful disobedience, without more, should not be treated as contemptuous. As already observed, however, wilful disobedience of a lawful order is not only an historic form of contempt; it is explicitly and unambiguously defined by statute as constituting, in and of itself, a contempt. 18 U. S. C. 401(3).[1] As we have also stressed, the position of the courts would be undermined if they could not promptly and effectively enforce their rulings in the face of recalcitrance.

This Court has decided, to be sure, that perjury, standing alone, should not be deemed to fall within the language of 18 U. S. C. 401(1)—"Misbehavior of

---

tempts even though the decree is ultimately set aside on appeal.

[1] The language of 18 U. S. C. 401 is substantially the same as in predecessor statutes. See Act of March 2, 1831, 4 Stat. 487; *Nye* v. *United States*, 313 U. S. 33, 44-46.

any person in its [the court's] presence * * * obstruct[ing] the administration of justice." Although it would seem enough to point out that the instant case falls squarely within the *third* paragraph of 18 U. S. C. 401, it may be added that none of the policy considerations which support the view that perjury is not, *per se*, a violation of the contempt statute have any application to the issue of wilful disobedience.

Perjury is a separate offense under the Criminal Code, as this Court emphasized in both *Hudgings* and *Michael*. 249 U. S. at 382; 326 U. S. at 226-227. It is also a crime which presents peculiar problems of proof and unusual dangers of miscarriage of justice, as evidenced by this Court's insistence upon adherence to the so-called "two-witness" rule. *Weiler* v. *United States*, 323 U. S. 606. This combination of circumstances would naturally make for considerable reluctance to permit substitution of the contempt power for the ordinary processes of the criminal law. There is yet a further important factor. If a judge could invoke his summary power to punish for contempt whenever he believed that a witness was telling an untruth, there would be grave risk that the power might be used to exact "from the witness a character of testimony which the court would deem to be truthful." *Hudgings*, *supra*, 249 U. S. at 384. This would mean, in the Court's words (*ibid.*), "a potentiality of oppression and wrong" imperiling "the freedom of the citizen when called as a witness."

It remains only to add that in both *Hudgings* and *Michael* this Court carefully distinguished between

the situation where the witness may be lying and the situation where he is violating the duty to testify. 249 U. S. at 382; 326 U. S. at 228-229. Thus, in distinguishing *United States* v. *Appel*, 211 Fed. 495 (S. D. N. Y.), this Court stated in *Michael* (326 U. S. at 228-229) that "there the Court thought that the testimony of Appel was '* * * not a bona fide effort to answer the question at all'." [15]

---

[15] In the *Appel* case, Judge Learned Hand (then a district judge) had held (211 Fed. at 495-496):

> The power of the court to treat as a criminal contempt a persistent perjury which blocks the inquiry is settled by authority in this circuit. * * * It is indeed impossible logically to distinguish between the case of a downright refusal to testify and that of evasion by obvious subterfuge and mere formal compliance.
>
> The rule, I think, ought to be this: *If the witness' conduct shows beyond any doubt whatever that he is refusing to tell what he knows, he is in contempt of court. That conduct is, of course, beyond question when he flatly refuses to answer, but it may appear in other ways.* A court, like anyone else who is in earnest, ought not to be put off by transparent sham, and the mere fact that the witness gives some answer cannot be an absolute test. For instance, it could not be enough for a witness to say that he did not remember where he had slept the night before, if he was sane and sober, or that he could not tell whether he had been married more than a week. If a court is to have any power at all to compel an answer, it must surely have power to compel an answer which is not given to fob off inquiry. Nevertheless, this power must not be used to punish perjury, and the only proper test is whether on its mere face, and without inquiry collaterally, the testimony is not a bona fide effort to answer the questions at all. [Emphasis added.]

To similar effect, see *In re Meckley*, 137 F. 2d 310 (C. A. 3), certiorari denied, 320 U. S. 766; *United States* v. *McGovern*,

3. The penalty imposed by the district court—six months' imprisonment—was a serious sentence.[16] It must be recognized, however, that it was the primary responsibility of the trial judge to determine what measures were needful and appropriate to vindicate the authority of the court. Although petitioner argues that she adopted her highly unusual course of action in good faith and that her refusal to testify did not alter the outcome of the particular case (see *supra*, pp. 6-11), she ignores a factor which the court was required to give serious weight—"the importance of deterring such acts [of wilful disobedience] in the future." *United States* v. *United Mine Workers*, 330 U. S. 258, 303.[17]

We take no issue with the proposition that this

---

60 F. 2d 880, 889-890 (C. A. 2). Although the First Circuit has seemingly disagreed with the proposition that an obviously false answer given for purposes of evasion may be deemed tantamount to a refusal to testify, it certainly has implied no doubt that an outright refusal to heed a court's direction to testify is a contempt. *Carlson* v. *United States*, 209 F. 2d 209, 214, and companion cases reported *seriatim*.

[16] There are, however, numerous instances of more severe penalties for the same type of contempt, (*i. e.*, refusal to testify). See Brief for the United States in *Green and Winston* v. *United States*, No. 100, this Term, pp. 78-79.

[17] Petitioner is correct in stating that the court was not required to give any credence to her direct testimony when she refused to submit to cross-examination. But the suggestion that the complete solution was to strike her testimony overlooks (1) that the court and the adverse party were entitled to all relevant testimony not privileged and (2) that striking the testimony would hardly vindicate the court's authority to implement its lawful orders.

Court has supervisory power over sentences in contempt cases. On the contrary, we believe that the exercise of this jurisdiction is salutary, for it would be idle to deny that there is potentiality for abuse in the contempt power—a potentiality which stems principally from the fact that a judge may become personally involved. Cf. *Offutt* v. *United States*, 348 U. S. 11, 15-17. But there is neither indication nor claim that the district judge in this case was anything but temperate and dispassionate in the conduct of the proceedings before him. And since, in our view, the sentence cannot be said to be inordinate, we believe that it should be sustained as one falling within the considerable discretion which must be accorded the trial judge.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in our main brief, the judgment should be affirmed.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

RALPH S. SPRITZER,
Assistant to the Solicitor General.

BEATRICE ROSENBERG,
Attorney.

OCTOBER 1957.

☆ U. S. GOVERNMENT PRINTING OFFICE 1957 442820 488